Supreme Court, U.S.
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Docket No. 10-678

In The
SUPREME COURT OF THE UNITED STATES

GREGORY S. HOLLISTER, et al.,

Petitioner

v.

BARRY SOETORO, et al.,

Respondents.

On Petition for Writ of Certiorari
To the United States Court of Appeals
For the District of Columbia Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Did the district court follow the rule that a complaint should not be dismissed under Rule 12(b)(6) of the Federal Rules of Civil Procedure "unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief?"

2. Did the District Court examine the complaint of the plaintiff/petitioner Hollister as required by the decisions of this and every other federal court to see if it alleged facts to support its claims?

3. Did the district court examine the words "or being under any obligation written or unwritten in the amount of $500 or more..." as set out disjunctively at the end of 28 U.S.C. § 1335(a) as they pertain to the plaintiff/petitioner Hollister as a member of the Individual Ready Reserve?

4. Did the district court violate the clear language standard for statutory interpretation?

5. Did the district court, as affirmed by the appellate court, examine and apply the *de facto* officer doctrine as required?

6. Did the district court, as affirmed by the appellate court ignore the Nuremburg principle IV as amplified by the Statute of Rome and improperly fail to analyze the ability of the defendant Obama to give a lawful order under that principal under the allegations of the complaint?

7. By refusing to consider the issue of the defendant Obama not being a "natural born citizen" as set out in Article II, Section 1, Clause 5 of the Constitution did the district court violate its obligation to consider the issues raised by the complaint?

8. Did the district court, as affirmed by the appellate court, take into account the equitable nature of Interpleader when there is no remedy at law?

9. In failing to consider and ignoring the law set out in 1 through 8 above, and instead relying upon extrajudicial criteria such as an assertion that: "The issue of the President's citizenship was raised, vetted, blogged, texted, twittered, twittered, and otherwise massaged by America's vigilant citizenry during Mr. Obama's two year campaign for the presidency,..." combined with an attack on the petitioner plaintiff because he "wants it resolved by a court," and that one of the counsel involved in signing the pleadings for the petitioner/plaintiff, a well known Pennsylvania Democrat politician and prominent Hillary Clinton supporter in that state during the primaries, who was attacked by the district court as an "agent provocateur" and also with sarcastic attacks on the plaintiff/petitioner Hollister, did the district court not engage in such obvious political bias based upon extrajudicial factors as to render its opinion void?

10. Did the district court seek to deny petitioner Hollister his constitutional right of access to the courts.

11. Did the U. S. Court of Appeals for the District of Columbia Circuit adopt that bias so as to render its affirmation of the district court also void?

12. Did the Court of Appeals, in so adopting the bias of the district court, cite this Court's opinion in *Liteky v. United States*, 510 U.S. 540 (1994) for the opposite of what it holds in an attempt to rationalize its adoption of the bias?

13. Did the Court of Appeals erroneously apply the case law, including its own, in holding that the petitioner/plaintiff and petitioner/counsel could not invoke 28 U.S.C. § 455 at the appellate level?

14. Did the evident bias engaged in below lead to a decision which ignored the law as set out above and as a result place the respondent/defendant Obama above that law and the rule of law in this country generally and threaten the constitutional basis and very existence of our rule of law?

15. Did the courts below not completely ignore the decisions of this court and the clear language of Rule 15 of the Federal Rules of Civil Procedure concerning amendments so as to compound its biased elevation of the defendant Obama above the rule of constitutional law?

16. Did the courts below fail to analyze and apply the *Bivens* doctrine as part of placing the defendant Obama above the rule of law in destruction of the Constitution as the basis of that rule of law?

17. In so placing the defendant Obama above the rule of law and failing to analyze the claims of the complaint and the facts it alleged, did the court of appeals below err in not considering relevant and take judicial notice of the Hawaiian territorial statutes in effect in 1961 and the other matters which the petitioners Hollister and Hemenway sought judicial notice on?

18. Did the courts below create a constitutional rule of law crisis in this country by refusing to consider the intent of the founders in placing the phrase "natural born citizen" in the Constitution as an eligibility requirement for a person to be President?

19. Did the appellate court seek to prevent the public from noticing the harm it was doing to the constitutional rule of law in this country by refusing to publish its opinion on a matter which addressed the very legitimacy of the nation's Commander–in–Chief?

20. Did the district court, as affirmed, properly assess a Rule 11 sanction against the petitioner/counsel Hemenway in light of the case law of this Court, particularly in the 19th Century and the relevant discourse evidencing the framers' intent at the time of the founding?

(b) PARTIES : CORPORATIONS

The parties are: The petitioner Col. Gregory S. Hollister, who was the plaintiff in the district court, his attorney, the petitioner John D. Hemenway, who was sanctioned in the district court under Rule 11 for bringing suit, and the defendants in their capacities as set out in the caption. There are two defendants: the first is the respondent Barry Soetoro a/k/a Barack H. Obama, who is an interpleader and Bivens defendant and Joseph R. Biden, Jr., who is also an interpleader and Bivens defendant. There are no corporations involved so as to require disclosure.

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REPORTS

(d) The dismissal opinion by the district court to which this petition is addressed was reported as *Hollister v. Soetoro*, 601 F.Supp.2d 179 (D.D.C.2009) The reduced Rule 11 sanction Memorandum and Order to which this petition is addressed was reported as *Hollister v. Soetoro* at 258 F.R.D. 1 (D.D.C.2009). The Court of Appeals refused to publish its opinions, denying a motion to publish.

STATEMENT OF JURISDICTION

(e)(i) The order for which review is sought was filed on March 22, 2010. (e)(ii) Rehearing was denied August 23, 2010. (e)(iv)This Court, petitioner believes, has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS, TREATIES, STATUTES AND REGULATIONS INVOLVED IN THE CASE

Constitution: Art. II, Sec. 1, Cl. 5; Art. I, Sec. 8, Cl. 4; Nuremberg Convention, Principle IV; Rome Statute of 1998, foundation of International Criminal Court: Art. 33; 28 U.S.C. §§ 1331, 1335; Rule 22, Fed. R. Civ. P.; 10 U.S.C. § 892, Art. 92; 10 U.S.C. §§ 10101, 10102, 10103, 10110, 10205; Immigration and Nationality Act, § 301(a)(7), Pub. L. No. 414, 66 Stat. 163, 236 (June 27, 1952) (codified at 8 U.S.C. § 1401(a)(7); Chpt. 57, VITAL STATISTICS, REVISED LAWS of HAWAII 1955, Part 1, TERRITORIAL PUBLIC HEALTH STATISTICS ACT; Fed. R. Civ. P. 15. See appendix for text of each.

STATEMENT OF THE CASE

Petitioner Hollister retired honorably from the Air Force as a Colonel after a full career. He became concerned because of evidence that had surfaced in the media of the Internet that the respondent Obama had run for and obtained the office of President *de facto* but not *de jure* so as to be able to give lawful orders as Commander in Chief under the Constitution. Colonel Hollister is a member of the Individual Ready Reserve whose skills could well be needed given the current state of the war in which the United States is engaged. APPX 67 ff

If Congress called up the Air Force Individual Ready Reserve the respondent Obama would have to give the order and then give orders as to deployment and otherwise. If, as it appears, those orders would not be lawful, Colonel Hollister would be bound in light of the Nuremberg Convention and the Rome Statute establishing the International Criminal Court to question them and look to the respondent Biden as constitutionally next in succession, for lawful orders. The respondent Obama would not be an officer capable of giving such orders *de jure* under the doctrine established by this Court.

Because of these concerns and his obligation as a member of the Individual Ready Reserve, petitioner Hollister brought suit against the respondents Obama and Biden in the district court, invoking the Interpleader statute and Federal Rule of interpleader as they incorporate the common law of interpleader and provide for suit in the nature of

interpleader as well, relying in particular upon the plain language of the statute in its use of the word "obligation" and suing the respondents in their various capacities and, in the case of the respondent Obama, the alternative name he had used and been given for a portion of his life and never changed. APPX 44 ff

The respondents moved to dismiss. The district court found that it had jurisdiction of the case, and therefore that petitioner Hollister had standing because of the Interpleader act but dismissed pursuant to Rule 12(b)(6) for failure to state a claim. In its analysis of Hollister's claim, the district court did not (and subsequently stated affirmatively that it would not,) examine the central element of the claim, namely whether respondent Obama was a "natural born citizen" in the language of Art. II, Sec. 1, Cl. 5 of the Constitution.

Instead, in analyzing whether, in its opinion, the petitioner Hollister made out a claim, the district court focused exclusively on the concept of "property" as addressed in the Interpleader Act. In so doing the district court ignored the concept of "obligation" as stated clearly, disjunctively, in the act despite petitioner Hollister's claims of his duty being at stake. The district court focused on what interpleader was typically used for in its opinion rather than focusing on the claims of petitioner Hollister under the clear language of the Act to see if he could prove any set of facts to prove his claim. APPX 3

Thus the district court did not consider whether there was any set of facts that the petitioner

Hollister could show that would support his claims and instead focused upon one of his claims and ignored others and refused to consider the central issue of whether or not the respondent Obama a/k/a Soetoro meets the requirement of the Constitution. In refusing to examine the constitutional presidential eligibility requirement, the district court ignored petitioner Hollister's concern in his complaint of whether if called up from the Individual Ready Reserve he would be in the position of having to obey orders from a purported Commander in Chief who was *de jure* and, who, therefore, could not give lawful orders under the Uniform Code of Military Justice and who would, therefore, put the petitioner in the position of not being able to fully comply with the Nuremburg principles as amplified by the Statute of Rome.

While the motion to dismiss was pending, less than 21 days after it was filed, petitioner Hollister filed an amended complaint adding a *Bivens* count. APPX 72 ff In dismissing the district court made no mention or analysis of the amended complaint and failed to analyze or decide upon the *Bivens* count. It decided it would not allow amendment without analysis or reasoning, ordering the respondents not to reply to it. APPX 19

While ignoring the claims of the petitioner Hollister as described above the district court engaged in and based its decision upon quite palpable bias. The most striking of these exhibitions of overt bias was the reliance upon the factor: APPX 1

> The issue of the President's citizenship was raised, vetted, blogged, texted, twittered, and otherwise massaged by America's vigilant citizenry during Mr. Obama's two year campaign for the presidency, but this plaintiff wants it resolved by a court.

Thus the district court exhibited in this observation a bias based on a completely extrajudicial factor, and one that elevates popular will above the rule of law, but also quite gratuitously reinforced the bias by assaulting the petitioner Hollister for seeking to have the constitutional rule of law applied and thus from having access to the courts that exist to protect that constitutional rule of law.

> A further example of this bias based on extrajudicial factors by the district court was its observation that a lawyer associated with the initiation of petitioner Hollister's case, a prominent Democrat in Pennsylvania who backed Hillary Clinton in her successful primary there against respondent Obama, though never admitted in the case, was "probably" the "real plaintiff" in the case and that he and another lawyer who signed filings but was also never admitted,, his colleague, were "*agents provocateurs*" whose efforts to raise the issue of the respondent Obama's constitutional eligibility in law suits were a crusade in which the petitioner Hollister was a dupe, a "straw plaintiff." APPX 1-2

> The district court further exemplified this bias by referring to the petitioner Hollister, whose Air Force papers proving what he said about being an Air Force veteran who was in the Individual Ready

Reserve were attached to and incorporated into the complaint, sarcastically as one "says that he is retired Air Force colonel who continues to owe fealty to his Commander–in–Chief...." Thus the district court did not take the allegations of the complaint as true and indulged in biased sarcasm to belittle petitioner Hollister. APPX 1

Finally, although it had not, as pointed out, actually fully examined the claims of the petitioner Hollister, the district court decided that the attorney of record for the petitioner Hollister, John D. Hemenway, because as the district court said, it had already twice found the case to be "frivolous," should be sanctioned under Rule 11 and made to pay the entire counsel fees of the lawyers for the respondents Obama and Biden, which, according to public records at the Federal Election Commission, would be hundreds of thousands of dollars. The District Court issued a Show of Cause for attorney Hemenway to show why he should not be made to pay the said legal fees. APPX 4 It is further evidence of the bias based in extrajudicial factors the way that this was set out, particularly since under Rule 11 a judge acting on his own initiative is prohibited from assessing such a penalty. In so doing the district court made no effort and indeed showed no interest in finding out what the pre-filing inquiry engaged in had been.

Attorney/petitioner Hemenway then filed a Show of Cause showing, *inter alia*, that Rule 11 did not permit the assessment of such a monetary sanction by a judge on his own volition and that there was precedent in the opinions of this Court for believing that the respondent Obama did not

meet the constitutional eligibility requirement. He demanded a hearing on the sanctions and requested discovery. The district court then issued a second opinion in which it backed off of the monetary sanction and instead imposed a non monetary reprimand upon attorney/petitioner Hemenway under Rule 11. APPX 6 ff Again, in doing so the district court made no inquiry into what the pre–filing inquiry had consisted of and ignored that basic principle of Rule 11 law as far as its actual analysis although it mentioned that pre-filing inquiry is in fact the fundamental principle of Rule 11 law even as it failed to look for any such inquiry.

In this opinion in which it downsized its Rule 11 sanction (AAPX 6 ff) the district court further illustrated its extrajudicial bias about the case. For example it referred to many people being interested in the eligibility question, remarking sarcastically that maybe it was as many as a "couple of dozen." In fact reliable polls, even by media that worships the respondent Obama, have shown the number of such people to be in the tens of millions and growing despite considerable attempts at suppression and ridicule. In this second opinion the district court further illustrated its extrajudicial bias by referring again pejoratively to the Hillary Clinton–supporting attorney and political figure Philip J. Berg and even giving the URL for the latter's web site (APPX 18) and remarking that Berg was seeking modest donations, implying that Hemenway was but a dupe of Berg.

In this second opinion the district court said it was not discussing the merits, having already

decided that there was no claim under Rule 12(b)(6). APPX 9 It nonetheless engaged in analysis of cases on property again and though it mentioned duty did not discuss the concept of "obligation" APPX 9 ff as expressed in the clear language of the Interpleader Act. In a further indication of bias it gratuitously compared Colonel Hollister, who was on active duty in the Air Force when President Reagan ordered the bombing of Libya to the Libyans under Qadaffi who sought to sue Reagan and his successor in office for carrying out that attack. APPX 15-6 That, of course, was a case involving a direct assault upon the concept that such actions are part of a President's foreign policy prerogative and that case had nothing to do with interpleader.

The present petitioners then separately appealed from the decisions of the district court to the United States Court of Appeals for the District of Columbia Circuit. The petitioner/plaintiff Hollister first appealed the district court's dismissal of his suit and the petitioner/attorney Hemenway then appealed the Rule 11 sanction levied against him. The Court of Appeals joined the two appeals.

In the appeals court the appellant there, attorney/petitioner Hemenway formally moved for judicial notice of, *inter alia*, the Hawaiian territorial statutes concerning health records in effect when the respondent Obama was born and unusual occurrences in the certifying of Obama's nomination. The appeals court denied all judicial notice requests on grounds of irrelevance. APPX 22

The appeals court denied the appeal without comment, affirming without analysis. APPX 21-2 It denied any bias. Hollister and Hemenway petitioned for reconsideration and asked for a hearing *en banc*. They also moved for the recusal of the district court judge for his bias and the vacation of his judgments because of that bias pursuant to 28 U.S.C. § 455. APPX 110 ff The appeals court denied the recusal motion. In the meantime the attorney Philip J. Berg, while the case was in the Court of Appeals, who had never been admitted, withdrew from representing the petitioner/plaintiff Hollister. So also did his colleague Lawrence J. Joyce of the Arizona bar, who had been admitted at the appellate level.

The appeals court denied reconsideration and an *en banc* hearing without analysis. APPX 23-4 The appeals court approved of everything done by the district court without additional analysis. This petition follows.

ARGUMENT

I. The failure to follow *Conley v. Gibson*

In arriving at its decision in this case the district court so far departed from the rule set down by this Court in *Conley v. Gibson,* 355 U.S. 41, 47, 78 S.Ct. 99, 102-03, 2 L.Ed.2d 80 (1957) which has become the accepted and usual course governing proceeding in every federal court, including those involved in these decisions, in a question of such national significance, namely the eligibility of the man occupying the oval office to be in that office and be the President, that the exercise of this Court's

supervisory power is called for. Moreover, this departure from the accepted and usual course of judicial proceedings was based, as is seen by the district court's statements, upon extrajudicial factors indicative of bias, albeit that bias was also indicated and reinforced by comments upon matters that were not extrajudicial.

The rule set out in *Conley* which was not applied in this case is that "a complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." *Id.* at 45-6, 78 S.Ct. at 102. The district court did not examine the set of facts that could have supported the claim of the plaintiff that he had an "obligation" as that term is used as clear language in the federal interpleader statute. He clearly alleged in his complaint that he had such an obligation. Yet the district court, in its analysis, focused exclusively on concepts of "property" as that term is used in the federal interpleader statute and failed to analyze whether the plaintiff Hollister had stated a claim because of the "obligation" that he has as a member of the Air Force Individual Ready Reserve

In doing so the district court violated another rule set down in the decisions of this court which is now also the accepted and usual rule governing proceedings in the courts. That rule is the plain meaning rule. This Court has expressed it thusly: "We give the words their natural significance unless that leads to unreasonable results plainly at variance with the evident purpose of the legislation." *City of Lincoln, Neb. v. Ricketts*, 297 U.S. 373, 376,

56 S.Ct. 507, 509, 80 L.Ed. 724 (1936), citing *Ozawa v. United States*, 260 U.S. 178, 180, 194, 43 S.Ct. 65, 67 L.Ed. 199, *Ohio v. Helvering*, 292 U.S. 360, 370, 54 S.Ct. 725, 78 L.Ed.1307. See also *Helvering v. Hammel*, 311 U.S. 504, 510-11, 61 S.Ct. 368, 371, 85 L.Ed. 303 (1941). There this Court amplified the plain meaning rule further. It made clear that the plain meaning of language in a statute must be adhered to as the intent of the legislature unless (a) lead to absurd results, citing *United States v. Katz*, 271 U.S. 354, 362, 46 S.Ct. 513, 516, 70 L.Ed. 986, or (b) the plain meaning would "thwart the obvious purpose of the statute," citing *Haggar v. Helvering*, 308 U.S. 389, 60 S.Ct. 337, 84 L.Ed. 340. "...courts are not free to reject that meaning where,...,no such consequences follow, and,...it appears to be consonant with the purposes of the statute." *Id.*

The district court in this instance completely failed to examine the disjunctive phrase contained in the federal interpleader statute concerning the word "obligation" and examine its plain meaning and thus failed to assess the ability of the plaintiff/petitioner Hollister to prove that he had such an obligation. The disjunctive phrase in question is the last one in 28 U.S.C. § 1335(a). Further, attached to the complaint as filed, as its first attachment, and incorporated into it, was Col. Hollister's discharge form worksheet DD FORM 214. APPX 67 ff This form shows that Col. Hollister served honorably (item 24) and took voluntary retirement (item 23) after a full career (item 28). It also shows (item 14) that he is "Subject to Recall..." Thus it must be inferred that he is as he alleges in his complaint a member of the Individual Ready Reserve. The district court mockingly failed to, as required by

another universal standard established by this Court, accept for purposes of a dismissal motion the allegations of the complaint as true and draw inferences in Colonel Hollister's favor. A court must, "with any motion to dismiss for failure to plead a claim on which relief can be granted, accept all factual allegations in the complaint as true." *Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 328, 127 S.Ct. 2499, 2509, 168 L.Ed.2d 179 (2007), citing *Leatherman v.Tarrant County Narcotics and Coordination Unit*, 507 U.S. 163, 164, 113 S.Ct. 1160, 122 L.Ed.2d 517 (1993).

Secondly, also ignored by the district court here, the court "...must consider the complaint in its entirety, as well as other sources courts ordinarily consider in when ruling on 12(b) (6) motions to dismiss, in particular, documents incorporated into the complaint by reference, and matters of which a court may take judicial notice." *Id.* (citing Wright & Miller § 1357 (3d ed 2004 and Supp 2007)). *Id.* That accepted and universal standard was ignored here as well as the third principle of considering inferences in plaintiff's favor in the full context.

Instead of taking what was alleged as true and considering the attachment of Col. Hollister's discharge form in proper context, considering the allegations and exhibits in full context at all the district court indulged in a bit of gratuitous sarcastic insult of Colonel Hollister, reflecting its bias based on extrajudicial factors which we discuss further further on. Instead of properly considering and inferring, the district court questioned whether or not Col. Hollister is a retired Colonel, indicating that "...the plaintiff says that he is a retired Air Force

colonel..." as if there were any doubt that Col. Hollister is what he alleged, a retired Air Force colonel who is a member, in retirement, of the Air Force Individual Ready Reserve.

Further, the district court here failed to assume that the general factual allegations of the complaint concerning matters of the lack of constitutional eligibility of the respondent Obama embraced those specific facts that are necessary to support the claims. For example, the general allegation of the respondent Obama's use of a misleading document to supposedly prove his birth in Hawaii embraces the facts that the plaintiff Hollister would develop to show beyond a doubt that the document referred to was not an actual birth certificate as a specific fact. This violates the universal rule set down by this Court. See *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561, 112 S.Ct. 2130, 2135, 119 L.Ed.2d 351 (1992).

II. The *de facto* officer doctrine

Many years ago, in the 19th century, this Court set out the concept of the federal office holder who is *de facto*, but not *de jure*. This Court set out this concept of the *de facto* officer and its early development of the concept in the more recent decision in *Ryder v. United States*, 515 U.S. 177, 115 S.Ct. 2031, 132 L.Ed.2d 136 (1995). To be *de jure* an officer and his acts must have come into being because of the "appointment or election of the officer" being in accord with the Constitution. Under the *de facto* concept the acts of the officer are still upheld even though it is later discovered, after the fact, that the appointment or election of the

officer was constitutionally deficient. In Ryder, a Coast Guardsman who was under prosecution within the Coast Guard legal system was able to disqualify an appellate panel within that system as being constitutionally deficient and thus void its decision against him because he raised the issue of the members of the appellate panel being not *de jure* but only *de facto* before the panel made its decision in his case. And so here the plaintiff Hollister directly addressed the issue of the respondent Obama being not *de jure* but only *de facto* from the outset of his case, addressing the issue even in the captioning of his case and thus well before any decision to recall him to active duty as a member of the Individual Ready Reserve. Yet, again, the district court refused to see and neglected to examine the issue that the respondent Obama was not *de jure* as alleged in the complaint to be proven by the development of facts to support that claim.

III. The failure to examine the central issue

Most importantly, however, the district court did not and would not examine the central question of the complaint, whether or not the respondent Obama meets the constitutional eligibility requirement to be President as that requirement is set out in Article II, Section 1, Clause 5 of the Constitution in that it requires that, after the passing away of those alive at the time of founding, the person must be a "natural born citizen." Indeed, in its further opinion on the Rule 11 Show of Cause matter of March 25, 2009, when the district court withdrew its attempt to impose Rule 11 attorneys' fees and costs in violation of the clear language of the rule the lower court openly said it had no intention of getting into and would not get into this

central issue. Yet it is quite clear that if Col. Hollister could prove any set of facts to support this claim his case should not have been dismissed. The facts that he could have proven to support his claim were clearly alleged in the complaint. There are two ways he could have done this. The district court did not examine either one. We discuss this further later on.

In the first place, however, before we examine those two ways, we point out that the district court was required in order to make the determination that no claim was stated in making the claim of constitutional lack of eligibility, as Col. Hollister did, that the respondent Obama did not meet the definition of this phrase and thus that there would have been a resulting conflict between the respondent Obama and the respondent Biden as far as a claim upon Col. Hollister's obligation as a member of the Individual Ready Reserve, to examine what the framers meant by this phrase. This it did not do and said it had no intention of doing, what it was required to do to meet its obligation imposed as a universal rule by this Court under 12(b)(6) when a dismissal motion is filed. We discuss the question of what the framers intended by the phrase further later in the petition.

In the meantime we discuss two further points about the district court's failure to meet its fundamental obligation when a Rule 12(b) (6) dismissal motion is filed, to analyze and see if there is any set of facts which the plaintiff can prove to support his claims.

IV. Interpleader is an equitable remedy

The first such point is that interpleader is an equitable procedure, both at common law where it is anciently rooted and under the federal statute and/or rule. Thus to simply conclude without proper analysis that a claim is "frivolous" on the basis of interim rulings as the district court did here and as was adopted without any real further analysis by the appellate court is to ignore the principle that equity provides a remedy when there is not remedy at law. In a case so important to the nation as this, where the very ability of the Commander–in–Chief to issue orders is at stake and there is a fundamental question of a person having sought the nation's highest office knowing full well that his constitutional eligibility to occupy the office was at the very least in question this calls for the supervision of this Court.

V. The failure to allow amendment violated Rule 15

Secondly, it must also be noted that the dismissal by the district court in this case, as approved by the appellate court without further analysis, was upon motion under Rule 12(b)(6). The respondents filed no answer, only a motion to dismiss. Therefore, under the law of Rule 12(b) (6) as laid down by this Court and every other federal court, and by Fed. R. Civ. P. 15, no responsive pleading had been filed when the case was dismissed. Further, within 21 days after the respondents filed their motion to dismiss, the plaintiff Hollister filed an amended complaint. The amended complaint added a Bivens count, which the original complaint did not have. The plaintiff was entitled to have that amended complaint accepted and did not have it

accepted. Instead the lower court simply ordered it ignored, stating, in doing so, factually and legally incorrectly, that it did not add anything new. It plainly did add a Bivens count. This was a violation of the clear language of Rule 15, Fed.R.Civ. P. and the universal rule set by this Court in *Foman v. Davis*, 371 U.S. 178 (1962)

Since a Bivens count is used when there is a constitutional violation by a federal officer or officers for which there is not statutory remedy prescribed the district court was required to analyze this Bivens count and did not do so. Even if the interpleader statute did not apply, the Bivens count may have applied. Thus this was a further failure on the part of the district court to carry out its obligations under the universal procedure prescribed by this Court when it undertakes to dismiss a complaint under Rule 12(b)(6). Clearly the plaintiff Hollister could have proven a set of facts that the Constitution was violated if the facts alleged in his amended complaint were taken as true, even if the interpleader statute had not been found, as it was, to give the district court jurisdiction and, thereby, standing to Col. Hollister.

Moreover, another thing that was new in the amended complaint was an attachment of an image of a copy of an actual "long form" Hawaiian birth certificate *circa* 1961 to dramatically illustrate the difference between that form and the computer-generated Certification of Live Birth or COLB form, not technologically available in 1961 that, as alleged in the complaint, was falsely used by the campaign of the respondent Obama to supposedly be a Hawaiian birth certificate and "prove" his birth in

Hawaii. The difference between the images of the two types of documents is quite strikingly clear and is one of the reasons that the popular disbelief in the eligibility of the respondent Obama has grown despite the campaign of suppression and ridicule directed against any who raise the question as was exhibited by the bias of the district court in this case as discussed further below. Under Rule 12(b) (b), the district court was obliged to examine that exhibit in making its decision but clearly did not do so. This violated the universal rule set down by this Court. See *Tellabs, Inc.* and *Leatherman, supra.*

VI. The central natural born citizen issue

With those two points addressed we turn now to the central issue of whether the respondent Obama is a "natural born citizen" within the meaning of Art. II, Sec. 1, Cl. 5 of the Constitution. If the plaintiff Hollister could have shown that the respondent Obama does not meet that eligibility requirement under any set of facts he could prove in support of his claim that the respondent Obama does not meet that requirement then the Rule 12(b) (6) dismissal was an error of fundamental importance to the entire rule of law in this country. If proven true those allegations mean that every command by the respondent Obama and, indeed, every appointment by the respondent Obama, including the appointment of the members of this and every other court may be only *de facto* but not *de jure.* Further his signature on every law passed while he occupies the Oval Office is not valid if he is not constitutionally eligible to occupy that office *de jure.* Thus it is not hyperbole to state that the entire rule of law based on the Constitution is at issue.

Moreover, it would indicate that the respondent Obama ran for the office of President knowing that his eligibility was at the very least in question.

There are two factors that are at issue if the allegations of the complaint are taken as true in relation to the "natural born citizen" eligibility requirement. The first is the location where the person was born. Was it in the United States? The second factor is was the birth in the United States to two parents both of whom were citizens of the United States? The district court was required to examine both of these factors but chose to avoid examining either.

VII. Birth outside the United States

With regard to the first factor:

There were sufficient allegations in both complaints to allege specifically under those allegations that the respondent Obama was born outside the United States and its outlying territories. This is significant because the Constitution, in Art. I, Sec. 8, Cl. 4 gives Congress the power to "establish an uniform Rule of Naturalization...," At the time of the birth of the respondent Obama in 1961 as alleged, Congress had done this in the Immigration and Naturalization Act of 1952. Under the applicable provision of that act, § 301(a)(7) the for the respondent Obama to have been a naturalized citizen of the United States at birth, were he born of one U.S. citizen parent and one alien parent, as he has alleged throughout his political career he was, his mother would have had to have been continuously resident in the United States for a

period of ten years preceding the date of his birth and, most importantly, she would have had to have resided continuously for five years preceding his birth in the United States after she had turned fourteen years old. Since she was only eighteen when Obama was born, this condition was clearly not fulfilled under the allegations of the complaint as they were required to be examined and analyzed under the universal rule of law as set out by the decisions of this Court to which we have referred.

The second part of this inquiry as to the root claim of the plaintiff Hollister in this case concerns the meaning of the constitutional eligibility phrase in Art. II, Sec. 1, Cl. 5. In 1875, in a unanimous decision by this Court that was written by Chief Justice Waite, it was said of this constitutional eligibility phrase, in the context of citizenship as a general concept in a case that was about the state of Missouri not allowing a woman, though she was clearly a citizen, to vote because the franchise in Missouri, by virtue of its state constitution, extended only to men:

> The Constitution does not, in words, say who shall be natural born citizens. Resort must be had elsewhere to ascertain that. At common law, with the nomenclature of which the framers of the Constitution were familiar, it was never doubted that all children born in a country of parents who were its citizens became themselves, upon their birth, citizens also. These were natives, or natural born citizens, as distinguished from aliens or foreigners. Some authorities go further, and include as citizens children born within the jurisdiction without reference to the citizenship of

> their parents. As to this class there have been doubts, but never as to the first. For the purposes of this case it is not necessary to solve these doubts. It is sufficient for everything we have now to consider that all children born of citizen parents within the jurisdiction are themselves citizens. *Minor v. Happersett*, 88 U.S. 162, 167-168 (1875)

The *Minor* case, of course, was decided after the adoption of the Fourteenth Amendment and was concerned with the impact of that Amendment upon pre-existing "privileges and immunities" as mentioned in the Constitution prior to its adoption. The conclusion was that those privileges and immunities were not altered by its adoption with the result that states that did not, historically allow women to vote could continue to do so at that time, as woman's suffrage was not a privilege or immunity. The case thus clearly established that to ascertain the meaning of the phrase "natural born citizen" in the Constitution as adopted one had to seek to ascertain the intent of the framers in using the term. It is not a "plain meaning" situation. That attempt was not made by the district court in this case, which is another violation of the standards established by this Court with regard to Rule 12(b)(6) motions.. In fact, as we have pointed out, the district court made clear that it would not even consider the phrase, much less what was intended by its use. One has to resort to the discourse of the day among those who were present at the founding. The *Minor* opinion did make one relevant point clear on his score. It pointed out that the word "citizen" was used by the founders to apprehend those who live in a Republic as opposed to subjects of a

sovereign. It also made the point that what drove the founders in drafting the Constitution was a concern with allegiance to the Republic.

Another 19th century opinion deemed relevant to the issue of the meaning of the Art. II phrase at issue is that of Mr. Justice Story in *Shanks v. Dupont*, 28 U.S. (3 Pet.) 242 (1830). As with the *Minor* opinion this case does not concern presidential eligibility. It concerned a dispute over inheritance of land in the situation where two daughters, whose children were competing for shares of their father's land holdings in South Carolina. They were both born in South Carolina of citizens there before the Revolution. One had married a British officer during the British occupation of Charleston and had returned with him to England, there to bear children and die. It's significance for present purposes is that in the opinion, Story, who was one of the giants of our early jurisprudence, made clear the distinction between matters of citizenship being derived from the law of nations rather than what he termed the "municipal" law of the common law. He said:

> The incapacities of femes covert, provided by the common law, apply to their civil rights, and are for their protection and interest. But they do not reach their political rights, nor prevent their acquiring or losing a national character. Those political rights do not stand upon the mere doctrines of municipal law, applicable to ordinary transactions, but stand upon the more general principles of the law of nations

The case was resolved based on the provisions in the treaty between the U.S. and Britain entered into after the war and the provisions it made for such inheritance under municipal or common law principles.

The majority opinion by Story in *Shanks* echoed his concurrence in another opinion handed down by this Court in 1814 which sheds further light on this use and understanding of the law of nations at the founding of the Republic, one in which the majority opinion was by Mr. Justice Bushrod Washington, a cousin of George Washington's and there was an opinion concurring in part and dissenting in part by John Marshall, the only early justice (then Chief Justice) who exceeds Story in stature. The case was *The Venus*, 12 U.S. (8 Cranch.) 253 (1814). Bushrod Washington, in the majority opinion referred to the law of nations as dispositive on the issues of the case and in particular twice cited Vattel as the authority on the law of nations, referring to the 1756 treatise by the Swiss author Emrich de Vattel which was well known to and discussed by the framers. Story stated his "entire concurrence" in the opinion. John Marshall, C.J., concurred in part and dissented in part. In so doing he referred also to Vattel on the law of nations, quoting from his treatise as follows:

> *Vattel*, who, though not very full to this point, is more explicit and more satisfactory on it than any other whose work has fallen into my hands, says, "the citizens are the members of the civil society; bound to the society by certain duties, and subject to its authority, they equally participate in its advantages. The *natives*, or *indigenes*, are those born in the country of parents who are

citizens. Society not being able to subsist and perpetuate itself but by the children of the citizens, those children naturally follow the condition of their fathers, and succeed to all their rights."

"The inhabitants, as distinguished from citizens, are strangers who are permitted to settle and stay in the country. Bound by their residence to the society, they are subject to the laws of the state, while they reside there, and they are obliged to defend it, because it grants them protection, though they do not participate in all the rights of citizens. They enjoy only the advantages which the law, or custom, gives them. The *perpetual inhabitants* are those who have received the right of perpetual residence. These are a kind of citizens of an inferior order, and are united and subject to the society, without participating in all its advantages."

Justice Livingston, it should be noted, concurred with the partially concurring and partially dissenting opinion of Chief Justice Marshall. Thus we see that, indeed, these matters of who might be a sort of citizen, such as a natural born one, to persons familiar with the discourse of the time, and members of this Court in particular, were determined by the law of nations, and Vattel was looked to as authoritative in that area and that no less a light than John Marshall saw the phrase, quoting directly from Vattel, as referring to one born in the country of two citizen parents, which the respondent Obama clearly was not. Moreover, we see how important in particular it was that the father be a citizen, and the respondent Obama's

father, by the statements upon which he built his career, was not.

We note that this Court relatively recently has explicitly recognized the importance of Vattel and his Law of Nations in regard to the sort of matters at issue here, among the categories for which he is an important and authoritative reference from the time of the framing. See *Sosa v. Alvarez-Machain.* 542 U.S. 692, 124 S.Ct. 2739 (2004). This opinion acknowledges the awareness of Vattel's work in the constitutional convention.

The petitioners Hollister and Hemenway referred to three other authorities of the time, including Vattel, using the same passage quoted by John Marshall, in their Rule 28(j) letter in the appeals court to show what "natural born citizen" meant in the discourse of the time according to those who were familiar with the framers. (APPX 107 ff) The other authorities cited, Daniel Ramsay and St. George Tucker, were familiar with the framers as can be seen from the letter. Of particular note is the explanation given by St. George Tucker in his commentaries upon the Constitution as it related to Blackstone in his Blackstone of the time at the place cited. He indicates that the concern was founded in the fear of events such as those that had occurred in Europe as a result of European dynastic marriages and certain marriages involving *stadtholders* of Holland. This was a fear that loyalty to the country of a parent would lead to actions not in the best interests of the adopted

It is well established that in the constitutional convention there were discussions of Vattel and his

concepts in his treatise The Law of Nations. Indeed the historian Carl Van Doren records in his book on the framing of the Constitution, citing the annals of the convention, that on one day Mr. Martin of Maryland read so extensively from Vattel and Locke. Priestley and others that other members became quite impatient. See "The Great Rehearsal" p. 121.

Another piece of valuable evidence is a letter that John Jay sent to George Washington shortly before the presidential eligibility qualification was adopted. The letter was sent to Washington from New York on July 25, 1787, and specifically urges that the President as Commander–in–Chief be nothing but, in Vattel's phrase as it was adopted, a natural born citizen. See a copy at:

http://www.familytales.org/dbDisplay.php?id=ltr_joj4101&person=jo. Washington made evident his concern about even commanders in his army with dual allegiances during the war and recorded those concerns in his journals and letters. A "thread" on Vattel and research into the documents and discourse of the time with a great many images of the actual documents including correspondence and newspaper accounts and other sources can be found.

VII. The bias exhibited

The district judge based his decisions, not on the required examination of the complaints that Rule 12(b) (6) mandates but rather on a bias reliant upon extra-judicial factors. The most glaring of these reliances was the following:

> The plaintiff says that he is a retired Air Force colonel who continues to owe fealty to his Commander-in-Chief (because he might possibly be recalled to duty) and who is tortured by uncertainty as to whether he would have to obey orders from Barack Obama because it has not been proven -- to his satisfaction, that Mr. Obama is a native-born American citizen, qualified under the Constitution to be President. The issue of the President's citizenship was raised, vetted, blogged, tested, twittered, and otherwise massaged by America's vigilant citizenry during Mr. Obama's two-year-campaign for the presidency, but this plaintiff wants it resolved by a court.

It is difficult to think of any factor of a judge's decision more extra-judicial. Moreover, it seems to express an outright denial of access to the courts based on that factor. The combination of bias and ridicule of a person like the plaintiff wanting his concerns resolved by a court as being, essentially, an "unthinkable" notion is an expressed denial of a citizens right to access to the courts. It violates a principle set down by this Court. See, *e.g.*, *Boddie v. Connecticut*, 401 U.S. 371, 375 (1971) The district court went on to say:

> The real plaintiff is probably Philip J. Berg, a lawyer who lives in Lafayette Hill, Pennsylvania and who has pursued his crusade elsewhere, see Berg v. Obama, 574 F.Supp.2d 509 (E.D.Pa.2008), invoking the civil rights statutes, the Federal Election Campaign Act, the Freedom of Information Act, the Immigration and Nationality Act, the law of promissory estoppel. That case was the subject of a scholarly opinion by a judge

who took Mr. Berg's claims seriously, and dismissed them. Mr. Hollister is apparently Mr. Berg's fallback brainstorm, essentially a straw plaintiff, one who could tee Mr. Berg's native-born issue up for decision on a new theory; If some "value" could be assigned to the "duties" the plaintiff thinks he might someday be called upon to fulfill under the Commander-in-Chief, then those "duties" could be deposited in the registry of this Court as the res whose distribution is to be decided by a sit in interpleader!

Col. Hollister's DOD form shows that he is a highly decorated career officer in a field calling for exceptional skill and intelligence. Moreover his Military Occupational Specialty was such that being subject to recall is not far fetched. The Individual Ready Reserve is a serious component of our military capability. The mockery and pejorative use of quotes here only illustrates the judge's bias based on his dislike for the counsel of Colonel Hollister, an extraneous factor. This was further evidenced when he referred to lawyers Berg and Joyce, neither of whom he admitted, as "agents provocateurs." In his later opinion on Rule 11 he referenced and gave the URL to Berg's web site with pejorative observations.

The appeals court refused to act upon and correct this bias, even when petitioners moved for recusal under 28 U.S.C. § 455. They relied upon this Court's decision in *Liteky v. United States,* 510 U.S. 540 (1994). Yet the facts in this case are such that to so hold is to stand *Liteky* on its head. Properly applied, it supports recusal here. In that case there had been a trial, and a previous trial involving the same defendant. The claimed bias that was

ultimately rejected was claimed to have derived from the treatment of the defendant in the first trial, which was said to have been disrespectful and from certain remarks to counsel for the defendant, such as admonishing him not to engage in a political crusade in a situation where he announced that his criminal defense would be an attack on the politics of the government. By contrast here there were no proceedings of any kind, not even a hearing much less a trial, or any argument. The factors evidencing the bias from outside any proceeding have been set out. There were pejorative comments and uses of language not based on any observation by the judge. Nor was there any Hitler-type figure involved as mentioned in *Liteky*. Plaintiff Hollister has an unblemished record and character. The behavior of the judge here violates the rule set down by this Court and in cases cited in *Liteky*. *Liljeberg v. Health Services Acquisition Corp.*, 486 U.S. 487, 108 S.Ct. 2194, 100 L.Ed.2d 855 (1988) *e.g.* The appeals court adopted that bias, incorrectly asserting that the motion was moot.

The appeals court adopted and affirmed everything done by the district judge without independent analysis, the bias included.. It refused, despite motions that it do so, to take judicial notice of the laws of Hawaii governing the public health statistics in question claiming, incorrectly, that they are irrelevant. To the contrary, their laxity and weakness in allowing what was alleged in the complaint is highly relevant. It is a matter of record that the district judge here and the respondent Obama have both held management positions, on boards of the Lawyers Committee for Civil Rights Under Law, and thus are acquainted with each

other. There is every appearance of bias here, bias that was acted upon independently of any opportunity to observe and form conclusions. It is not hyperbole to assert that if this case stands, it will be destructive of the constitutional rule of law.

VIII. The inappropriateness of sanctions

The effect of the bias when balanced with the errors set out above indicate the inappropriateness of Rule 11 sanctions in this case. Under Rule 11, as established by its language and the holdings of this Court, focus is on inquiry made prior to filing.. What is required before filing is a "reasonable inquiry" this Court has universally held. See *Business Guides, Inc. v. Chromatic Communications Enterprises, Inc.*, 498 U.S. 533, 111 S.Ct. 922, 112 L.Ed.2d 1140 (1991) a case in which it was found that the corporate plaintiff could have found in an hour of pre-filing inquiry that the case was a "mistake." Here the district court made no inquiry whatsoever into what the pre-fling inquiry was.

The district court did not analyze the required prongs set out in the rule, or look into the factual basis, or inquire as to the warrant in law or any good faith extension of law. Yet here the petitioner Hemenway was on the same page as Chief Justices Waite and Marshall. Rule 11 does not indulge bias. When so used it is a threat to the rule of law and in conflict with the universal rule set down by this Court for focus upon reasonable pre-filing inquiry.

Respectfully submitted,

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CERTIFICATE PURSUANT TO RULE 33.1

I HEREBY CERTIFY that the accompanying PETITION FOR WRIT OF CERTIORARI contains 8545 words.

_____

John D. Hemenway

Dated: November 22, 2010

Supreme Court, U.S.
FILED

NOV 22 2010

OFFICE OF THE CLERK

Docket No. 10-678

In The
SUPREME COURT OF THE UNITED STATES

GREGORY S. HOLLISTER, et al.,

Petitioners

v.

BARRY SOETORO, et al.,

Respondents.

On Petition for Writ of Certiorari
To the United States Court of Appeals
For the District of Columbia Circuit

APPENDIX
Volume I

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 08-2254 (JR)

GREGORY S. HOLLISTER, Plaintiff,
v.
BARRY SOETORO, *et al.*, Defendants.

MEMORANDUM

This case, if it were allowed to proceed, would deserve mention in one of those books that seek to prove that the law is foolish or that America has too many lawyers with not enough to do. Even in its relatively short life the case has excited the blogosphere and the conspiracy theorists. The right thing to do is to bring it to an early end.

The plaintiff says that he is a retired Air Force colonel who continues to owe fealty to his Commander-in-Chief (because he might possibly be recalled to duty) and who is tortured by uncertainty as to whether he would have to obey orders from Barack Obama because it has not been proven -- to the colonel's satisfaction -- that Mr. Obama is a native-born American citizen, qualified under the Constitution to be President. The issue of the President's citizenship was raised, vetted, blogged, texted, twittered, and otherwise massaged by America's vigilant citizenry during Mr. Obama's two-year-campaign for the presidency, but this plaintiff wants it resolved by a court.

The real plaintiff is probably Philip J. Berg, a lawyer who lives in Lafayette Hill, Pennsylvania, and who has

pursued his crusade elsewhere, see Berg v. Obama, 574 F. Supp. 2d 509 (E.D. Pa. 2008), invoking the civil rights statutes, the Federal Election Campaign Act, the Freedom of Information Act, the Immigration and Nationality Act, and the law of promissory estoppel. That case was the subject of a scholarly opinion by a judge who took Mr. Berg's claims seriously -- and dismissed them. Mr. Hollister is apparently Mr. Berg's fallback brainstorm, essentially a straw plaintiff, one who could tee Mr. Berg's native-born issue up for decision on a new theory: If some "value" could be assigned to the "duties" the plaintiff thinks he might someday be called upon to fulfill under the Commander-in- Chief, then those "duties" could be deposited in the registry of this Court as the *res* whose distribution is to be decided by a suit in interpleader!

The filing and service of the complaint required private counsel to appear for President Obama and for Vice President Biden (whose citizenship is not challenged but who was presumably considered a necessary party in a suit seeking to unseat the President). Those counsel have moved to dismiss, asserting both that this Court has no jurisdiction (Rule 12(b)(1)) and that the plaintiff has stated a claim for which relief cannot be granted (Rule 12(b)(6)).

Plaintiff having invoked both diversity and the federal interpleader statute, 28 U.S.C. § 1355, I do have jurisdiction. Because plaintiff's only claim invokes the interpleader statute, however, the suit must be dismissed for failure to state a claim.

I have already called the interpleader claim "frivolous" in two interlocutory rulings [#10 and #14], and I do so

again here. As the defendants noted in their motion to dismiss, "interpleader allows a party exposed to multiple claims on a single obligation or property to settle the controversy and satisfy his obligation in one proceeding." Commercial Union Ins. Co. v. U.S., 999 F.2d 581, 583 (D.C. Cir. 1993). It is typically used in insurance cases where the plaintiff holds property on behalf of another but does not know to whom among several adverse parties the property should be transferred [#9 at 8]. Resort to interpleader is inappropriate when it "is sought for improper or ulterior purposes." Wright & Miller § 1707 (3d ed. 2001).

Plaintiff has not cited a single case that lends even colorable support to the notion that his alleged "duties" can be the "money or property" to which the interpleader statute applies. The interpleader suits he cites are all about money or tangible property: American Fidelity Fire Ins. Co. v. Construcciones Werl, Inc., 407 F. Supp 164 (D. V.I. 1975) is about contested HUD monies; Underwriters at Lloyd's v. Nichols, 363 F.2d 357 (8th Cir. 1966), is about insurance proceeds; Dunbar v. United States, 502 F.2d 506 (5th Cir. 1974) is about money seized from the mails. The only interpleader case plaintiff cites that involves a "duty" is Bank of Neosho v. Colcord, 8 F.R.D. 621 (W.D. Mo. 1949) (Complaint, para. 12), an inapposite decision declining to strike a cross-claim for specific performance in an interpleader case that began, as interpleader cases do, with the deposit of funds. This suit will accordingly be dismissed.

Mr. Berg and Lawrence J. Joyce, an attorney who lives in Tucson, Arizona, signed the complaint in this case. (They have been filing electronically although they have not been admitted *pro hac vice*, see [#10].) They are

agents provocateurs – and any attempt to sanction them for misuse of the public and private resources that have had to be devoted to this case would only give them a forum to continue their provocation. John D. Hemenway, on the other hand, is a member of the Bar of this Court. He may have been enlisted by Messrs. Berg and Joyce as a foot soldier in their crusade, but he is nevertheless directly responsible to this Court for the pleadings that have been filed on behalf of the plaintiff. Because it appears that the complaint in this case may have been presented for an improper purpose such as to harass; and that the interpleader claims and other legal contentions of plaintiff are not warranted by existing law or by non-frivolous arguments for extending, modifying or reversing existing law or for establishing new law, the accompanying order of dismissal requires Mr. Hemenway to show cause why he has not violated Rules 11(b)(1) and 11(b)(2) of the Federal Rules of Civil Procedure, and why he should not be required to pay reasonable attorneys fees and other expenses to counsel for the defendants.

JAMES ROBERTSON
United States District Judge

[DATED 03/05/2009]

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 08-2254 (JR)

GREGORY S.HOLLISTER, Plaintiff
v.
BARRY SOETORO, et al.,Defendants.

ORDER

For the reasons set forth in an accompanying memorandum, the defendants' motion to dismiss [#9] is **granted**, and John D. Hemenway is **ordered to show cause** within eleven days of the date of this order why he should not be sanctioned under Rule 11(b) of the Federal Rules of Civil Procedure.

JAMES ROBERTSON
United States District Judge

[DATED 03/05/2009]

UNITED STATES DISTRICT COURT
FOR THE FOR THE DISTRICT OF COLUMBIA

Civil Action No. 08-2254 (JR)

GREGORY S. HOLLISTER, Plaintiff,
v.
BARRY SOETORO, *et al.*, Defendants.

MEMORANDUM ORDER

We live in a free country. Our liberties are manifold and are the envy of the world. In the very top tier of those liberties, enshrined in the First Amendment, is "the right of the people . . . to petition the Government for a redress of grievances." Many of those petitions are presented to judges. Every judge knows that a disturbingly high percentage of them involve petty slights, or imagined injuries, or matters that lie well beyond the reach of the judicial writ, but most judges will agree that it is important at least to listen to them -- especially to the grievances of poor petitioners, or disadvantaged petitioners, or petitioners who do not have lawyers -- even if the courts are powerless to grant relief.

Lawyers who come to court to present Grievances, however, are held to a higher standard than disadvantaged or unrepresented persons. For lawyers, there are rules. A lawyer knows that no judge has any business addressing or ruling upon a

dispute, no matter how fervently he or his clients may feel about it, unless the judge has both personal and subject matter jurisdiction, unless the client has standing to be heard, unless the cause is ripe and justiciable, and unless the complaint states a claim upon which relief can be granted. A lawyer who comes to federal court also knows, because the Federal Rules of Civil Procedure plainly say so, that his signature on a complaint "certifies that to the best of the person's knowledge and belief, formed after an inquiry reasonable under the circumstances," the complaint "is not being presented for any improper purpose," Rule11(b)(1), and that "the claims . . . and other legal contentions are warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law," Rule 11(b)(2).

John D. Hemenway is a lawyer and a member of the bar of this court. The dispute that he attempted to litigate here was about whether or not Barack Obama is a "natural born Citizen," and thereby qualified under Article II, section 1 of the Constitution to be President. Many people, perhaps as many as a couple of dozen, feel deeply about this issue. Attempts have been made to tee the question up for judicial resolution in a number of courts across the country. See, defendant's motion to dismiss [Dkt. #9-1 p. 3, n.1]. Mr. Hemenway's associate, Philip J. Berg, made at least one such attempt, suing in a federal court in Pennsylvania, naming himself as

plaintiff. After that suit was dismissed (for lack of standing), and after the Supreme Court declined to hear him, Mr. Berg (apparently) found another plaintiff, a man who retired from the Air Force as a colonel more than ten years ago and now claims to be uncertain about whether -- if he were recalled to active duty -- he would have to obey commands that come from President Obama as commander-in-chief.Mr. Berg (presumably) enlisted Mr. Hemenway in this cause. Mr. Hemenway, Mr. Berg, and Lawrence J. Joyce then filed this lawsuit.[1] Mr. Hemenway signed the complaint, certifying his compliance with Rule 11(b).

The complaint asserts a single cause of action, invoking the interpleader statute, 28 U.S.C. § 2235. That statute provides:

(a) The district courts shall have original jurisdiction of any civil action of interpleader or in the nature of interpleader filed by any person, firm, or corporation, association, or society having in his or its custody or possession money or property of the value of $500 or more, or having issued a note, bond, certificate, policy of insurance, or other instrument of value or amount of $500 or more, or providing for the delivery or payment or the loan of money or property of such amount or value, or being under any obligation written or unwritten to the amount of $500 or more, if

(1) Two or more adverse claimants, of diverse citizenship as defined in subsection (a) or (d) of section 1332 of this title, are claiming or may claim to be entitled to such money or property, or to any

one or more of the benefits arising by virtue of any note, bond, certificate, policy or other instrument, or arising by virtue of any such obligation; and if

(2) the plaintiff has deposited such money or property or has paid the amount of or the loan or other value of such instrument or the amount due under such obligation into the registry of the court, there to abide the judgment of the court, or has given bond payable to the clerk of the court in such amount and with such surety as the court or judge may deem proper, conditioned upon the compliance by the plaintiff with the future order or judgment of the court with respect to the subject matter of the controversy.

(b) Such an action may be entertained although the titles or claims of the conflicting claimants do not have a common origin, or are not identical, but are adverse to and independent of one another.

I have said nothing, and have nothing to say, about the merits of the "natural born Citizen" question that Messrs. Hemenway, Berg, et al., have sought to present here. I have no business addressing the merits, because, having found that Mr. Hemenway's interpleader suit failed to state a claim upon which relief can be granted, I have dismissed it. The only question that remains before me is whether Mr. Hemenway, when he signed the complaint, violated Rule 11(b). It seemed to me when I dismissed the complaint, on March 5, 2009, that Mr. Hemenway's

invocation of the interpleader statute as the vehicle for his complaint was completely frivolous. For that reason, and in compliance with Rule 11(c)(3), I ordered Mr. Hemenway to show cause why I should not find him in violation of Rule 11(b), either because he presented the suit for an improper purpose, Rule 11(b)(1), or because his claims and other legal contentions were not "warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law," Rule 11(b)(2), or both. Mr. Hemenway, responding to that order, has filed about 35 pages of argument and self-justification. Most of his submission deals with the merits of his claim, which, again, are not the subject of the present memorandum.

In so far as Mr. Hemenway's submission addresses the legal sufficiency of his interpleader claim, his argument may be summarized as follows:

(1) The word "property" in the interpleader statute, 28 U.S.C. § 1335, must be construed broadly. For this proposition, Mr. Hemenway cites no authority construing the word "property" as it appears in the interpleader statute; he cites only cases decided in the context of other statutes: Carpenter v. U.S., 484 U.S. 19 (1987) (confidential information is "property" within the meaning of the mail and wire fraud statute); First Victoria Nat. Bank v. U.S., 620 F.2d 1096 (5th Cir. 1980) "rice history acreage" is "property" for estate tax purposes); Matter

of Nichols, 4 B.R. 711 (E.D. Mich 1980) (in bankruptcy law, "property" refers to "one, or some, of whatever kind of those items which are subject to ownership, whether it is tangible or intangible, visible or invisible, corporeal or incorporeal, real or personal"); and Glosband v. Watts Detective Agency, Inc., 21 B.R. 963, 971-72 (D.Mass. 1981) (in bankruptcy law, "property" interpreted "most generously" to incorporate "anything of value which but for the transfer might have been preserved for the trustee to the ultimate benefit of the bankrupt's creditors").

(ii.) Mr. Hollister's "duty" can be the subject of an interpleader action. Here, Mr. Hemenway cites Bank of Neosho v. Colcord,, 8 F.R.D. 621 (W.D.Mo. 1949), for the proposition that "a duty with respect to a sum of money has . . . been found to be a proper matter for interpleader."[Dkt. #23, p. 10.] That is a significant distortion of the decision. Colcord (even if it were
controlling law, which it is not) does not support Mr. Hemenway's point. Colcord was a traditional interpleader case that involved a contract for the sale of a ranch. The sale "failed," whereupon the disinterested stakeholder, uncertain whether to disburse the $5,000 earnest money to the contract seller or the contract buyer, deposited the funds in the registry of the court and sued for interpleader.

The contract buyer then cross-claimed against the contract seller for specific; the contract seller

moved to dismiss because the cross-claim was not for interpleader; and the court denied the motion, deciding nothing more than that a cross- claim for the "duty" of specific performance would lie in the same case because it involved the same subject matter as the
underlying interpleader action.

(iii.) An interpleader case does not require a formal demand on the plaintiff or even a deposit with the court.

Here Mr. Hemenway cites Dunbar v. United States, 502 F.2d 506, 511 (5th Cir. 1974). Worse than distorting the holding of that case, he completely misstates it. In Dunbar, the post office refused to deliver a suspicious package of money, and the United States filed an interpleader action to see who might claim it. The
court was harshly critical of the government's resort to "cosmic interpleader," id. at 512, and refused to allow the government to use the suit as a vehicle for the conduct of broad discovery. What Mr. Hemenway should have gleaned from the case was the court's finding that "a prerequisite for [interpleader] is that the party requesting interpleader demonstrate that he has been or may be subjected to adverse claims." American Fidelity Fire Ins. Co. v. Construcciones Werl, Inc., 407 F. Supp 164, 173 (D.V.I. 1975), which Mr. Hemenway cites with Dunbar, is to the same effect. Underwriters at Lloyd's v. Nichols, 363 F.2d

357 (8th Cir. 1966), an exhaustive and scholarly opinion, comes to the same conclusion, concluding that interpleader requires real claims, or at least the threat of real claims -- not theoretical, polemical, speculative, or I'm-afraid-it-might-happen-someday claims.

(iv.) No court has held "that [an] intangible res *cannot* be the subject of Interpleader." [Dkt. #23, p. 11]. This proposition is remarkable only for the authorities Mr. Hemenway cites to support it: Martin v. Wilks, 490 U.S. 755 (1989) (a decision that has nothing to do with any issue in this case, as nearly as I can tell); and N.O.W. v. Scheidler, 510 U.S. 249 (1994) (statutory construction: motivation of economic purpose will not be read into RICO statute). Moreover, one might add, no court has held that a claim made for the first time cannot on that account be found frivolous, or that "creativity" confers immunity from Rule 11 sanctions.

Perhaps the most interesting case that Mr. Hemenway cites -- interesting because, more than any of the others in his submission, it demonstrates just what is wrong with his interpleader claim -- is Xerox Corp. v. Nashua Corp., 314 F. Supp 1187 (S.D.N.Y. 1970). Xerox sued Nashua for infringing its patent on copy paper. Nashua counter-claimed to interplead RCA, asserting that, if it was infringing Xerox's patent, it was also infringing a patent owned by RCA, and that it did not know to which party it

should pay royalties. Judge Weinfeld observed, id. at 1189:

Although Nashua's invocation of interpleader in this case is novel, its assertion that if the two patents interfere, interpleader should lie because of the risk of multiple liability is not without appeal. Rule 22(1) of the Federal Rules of Civil Procedure authorizes an interpleader action where (1) two or more persons have claims against the interpleading party, and (2) as a result, the interpleading party is or may be exposed to multiple liability. It is no longer required that the claims be of common origin or that the interpleading party be a wholly neutral stakeholder. The rule does not even require a 'stake' or 'fund' as such. The action will lie where all that is involved is the threat of multiple liability on what is in fact but a single claim or obligation. While the patent situation is more complex than the normal interpleader situation, its complexity alone does not foreclose interpleader.

Judge Weinfeld *dismissed* the interpleader claim, however, finding that "the postulated situation envisaged by Nashua remains *no more than a conjectural view of possible conflicting holdings*," id. at 1190 (emphasis added). Judge Weinfeld went on to state, id.:

The court is not prepared to cast Xerox and RCA in the role of unwilling litigants where, upon

substantial grounds, they challenge the validity of the basis upon which Nashua seeks to force them into adversary positions, while Nashua presents only its bare conclusions in support of its position. Although parties should be protected against multiple and conflicting liability . . . unjustified interpleader proceedings in a case such as this have substantial disadvantages.

"The case offered no hope whatsoever of success, and plaintiffs' attorneys surely knew it." That was the finding of Judge Jackson in Saltany v. Reagan, 702 F. Supp. 319, 322 (D.D.C. 1988), a case in which, as in this one, the plaintiffs had an axe to grind -- a case, like this one, that "[t]he Court surmise[d] was brought as a public statement of protest of Presidential action with which counsel (and, to be sure, their clients) were in profound disagreement." Finding that the plaintiffs' injuries were not insubstantial (plaintiffs were suing for injuries, deaths, and losses suffered in the 1986 American airstrikes against Libya), Judge Jackson concluded that the suit was not "frivolous so much as it is audacious," and he declined to find a Rule 11 violation or to impose sanctions on counsel. Saltany, 702 F. Supp. at 322. The Court of Appeals reversed, 886 F.2d 438 (D.C. Cir. 1989). The trial court's finding that "[t]he case offered no hope whatsoever of success, and plaintiffs' attorneys surely knew it" was, the Court of Appeals held, a finding "in substance if not in terms, that plaintiffs' counsel had violated Rule 11." Id. At 440[2] Judge Jackson had been

inclined to cut counsel a break, because their suit was brought as a "public statement of protest." The Court of Appeals was not so inclined: "We do not conceive it a proper function of a federal court to serve as a forum for 'protests,' to the detriment of parties with serious disputes waiting to be heard." Ibid.

This case, like Saltany, offered no hope whatsoever of success, and Mr. Hemenway surely knew it. Mr. Hemenway had no colorable authority for the proposition that Mr. Hollister's contingent claim of "duty" could be the *res* in an interpleader suit, or, given the speculative and contingent nature of such a "duty," that his claim had any particular dollar value. Mr. Hemenway's complaint did not even allege the *sine qua non* of an interpleader suit -- that "[t]wo or more adverse claimants . . . are claiming or may claim to be entitled to such money or property, or to any one or more of the benefits . . . arising by virtue of any such obligation. . . ." 28 U.S.C. § 1335(a)(1). Mr. Hemenway's suit was not a suit in interpleader or in the nature of interpleader. It was legally frivolous. By signing and filing a legally frivolous complaint, Mr. Hemenway
violated at least Rule 11(b)(2).

The Court of Appeals remanded Santany to Judge Jackson with instructions to impose a sanction, since, when that case was decided in 1989, a sanction was mandatory upon a finding of a Rule 11 violation. The 1993 amendments to Rule 11 made the

imposition of sanctions discretionary with the trial court. Extensive Advisory Committee Notes explained that "the purpose of Rule 11 sanctions is to deter rather than compensate." Rule 11(c)(4) thus contemplates and permits a monetary sanction in the form of a penalty, but such a sanction is now limited to "what suffices to deter repetition of the conduct or comparable conduct by others similarly situated."[3]

Mr. Hemenway is 82 years old and takes considerable and justified pride in his patriotic public service and his status as a Rhodes Scholar

He is unlikely to repeat the conduct that gave rise to this proceeding, and in his case the permissible alternative sanction of a reprimand will be sufficient. "Others similarly situated" -- the people who put Mr. Hemenway up to filing this foolish suit – are unlikely to be deterred, except by a penalty that would be unreasonable to impose on Mr. Hemenway alone.[4]

John D. Hemenway is hereby reprimanded for his part in the preparation, filing, and prosecution of a legally frivolous suit in this court. The order to show cause [Dkt. #22] is discharged. It is SO ORDERED.

JAMES ROBERTSON
United States District Judge

[DATED: March 24, 2009]

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[1] Messrs. Berg and Joyce are not members of the bar of this court and were not granted leave to appear *pro hac vice*. See [#10].

[2] That holding was reaffirmed, on a second appeal, by the law of the case doctrine, see Saltany v. Bush, 960 F.2d 1060 (D.C. Cir. 1992), over the dissent of Judge Wald that "no hope whatsoever of success" was "not an appropriate substitute for the findings required by Rule 11," id. at 1061.

[3] My order to show cause in this case [Dkt. #22] suggested, as one appropriate sanction, that Mr. Hemenway be ordered to pay the attorneys' fees and expenses that his improper filing made necessary. Mr. Hemenway correctly observes, however, that Rule 11(c) no longer permits an order for the payment of attorney's fees and expenses except upon motion -- and no such motion has been filed.

[4] See http://www.obamacrimes.info/ (last visited 3/25/09) "02/12/09: PRESS RELEASE - Berg Fighting On. 3 Pending Lawsuits to Expose Obama for 'not' being Constitutionally 'qualified/eligible' to be President and Berg requests help to spread the word as the major media refuses . . . Request - Everyone who can - Please raise, by asking four [4] friends @ $15.00 each, or contribute $60.00 to us now. You can use PayPal or credit card on our website or mail a check."

UNITED STATES COURT OF APPEALS
For the District of Columbia Circuit

No. 09-5080 Spring Term 2009

1:08-cv-02254

March 22, 2010

Gregory S. Hollister, Appellant

v.

Barry Soetoro, in his capacity as a natural person; de facto President in posse; and as de jure President in posse, also known as Barack Obama, et al.,

Appellees

Consolidated with 09-5161

BEFORE: Henderson, Tatel, and Garland, Circuit Judges

JUDGMENT

These consolidated appeals were considered on the record from the United States District Court

for the District of Columbia and on the briefs filed by the parties. See Fed. R. App. P. 34(a)(2); D.C. Cir. Rule 34(j). It is

ORDERED AND ADJUDGED that the district court's orders filed March 5, 2009, and March 24, 2009, be affirmed. The district court correctly dismissed the complaint under Federal Rule of Civil Procedure 12(b)(6) for failure to state a claim upon which relief could be granted. Hollister v. Soetoro, 601 F. Supp. 2d 179 (D.D.C. 2009). Moreover, the district court did not abuse its discretion in determining that counsel had violated Federal Rule of Civil Procedure 11(b)(2) and in imposing a reprimand as the sanction for his part in preparing, filing, and prosecuting a legally frivolous complaint. Hollister v. Soetoro, 258 F.R.D. 1 (D.D.C. 2009). Appellants have provided no reasonable basis for questioning the impartiality of the district court judge. See Liteky v. United States, 510 U.S. 540 (1994).

Pursuant to D.C. Circuit Rule 36, this disposition will not be published. The Clerk is directed to withhold issuance of the mandate herein until seven days after resolution of any timely petition for rehearing or petition for rehearing en banc. See Fed. R. App. P. 41(b); D.C. Cir. Rule 41.

Per Curiam

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

Civil Action No. 08-2254 (JR)

GREGORY S. HOLLISTER,

Plaintiff,

v.

BARRY SOETORO, *et al.*,

Defendants.

ORDER

Plaintiff's amended complaint [#11] adds nothing to the original complaint except rhetoric and legal theory and creates no obligation upon the defendants to respond to it. Nor is the amended complaint responsive to defendants' motion to dismiss [#9], opposition to which was due on 2/9/09. Unless points and authorities in opposition to the motion to dismiss are filed by 2/13/09, the motion will be treated as conceded and granted. It is SO ORDERED.

JAMES ROBERTSON
United States District Judge

[DATED 02/11/2009]

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 08-2254
(JR)

GREGORY S. HOLLISTER, Plaintiff,
v.
BARRY SOETORO, *et al.*, Defendants.

ORDER

Plaintiff's motion to file interpleader and deposit funds with the court [#2] is frivolous and is **denied**. His motion to shorten time for Defendants to respond to his Complaint [#3] is moot and is **denied**. The motions of his counsel [#4, #5] for the admission *pro hac vice* of Philip J. Berg and Lawrence J. Joyce are **in abeyance** until the Court has had the opportunity, in open court, to examine their credentials, their competence, their good faith, and the factual and legal bases of the complaint they have signed.

JAMES ROBERTSON
United States District Judge

[DATED: 02/04/2009]

UNITED STATES COURT OF APPEALS
For the District of Columbia Circuit

N0. 09-5080 Spring Term 2009

1:08-cv-02254

March 8, 2010

Gregory S. Hollister, Appellant
v.
Barry Soetoro, in his capacity as a natural person; de facto President in posse; and as de jure President in posse, also known as Barack Obama, et al.,

Appellees

Consolidated with 09-5161
BEFORE: Henderson, Tatel, and Garland, Circuit Judges

ORDER

Upon consideration of the motion to substitute reply brief, the response thereto, and the reply; the motion for judicial notice filed September 23, 2009, in No. 09-5161; the Clerk's order to show cause filed October 20, 2009, the response thereto, and the reply; the joint motion for judicial notice, the response thereto, and the reply; the corrected motion

by Lawrence J. Joyce and Philip J. Berg for leave to file an amicus curiae brief in support of appellants, the lodged corrected brief, appellants' opposition to the motion, and the reply; the motion for oral argument, the response thereto, and the reply; and the corrected joint appendix and the briefs submitted by the parties, it is

ORDERED that the order to show cause be discharged. It is

FURTHER ORDERED that the motion to substitute reply brief be dismissed as moot in light of appellants' filing of a corrected reply brief on January 7, 2010. It is

FURTHER ORDERED that the motions for judicial notice be denied. The materials submitted by appellants are irrelevant to the disposition of these appeals. See Larson v. Dep't of State, 565 F.3d 857, 870 (D.C. Cir. 2009). It is

FURTHER ORDERED that the motion for leave to file an amicus curiae brief be denied. The movants have not demonstrated "why an amicus brief is desirable and why the matters asserted are relevant to the disposition of the case," as required by Federal Rule of Appellate Procedure 29(b). It is

FURTHER ORDERED that the motion for oral argument be denied. The court will dispose of the appeals without oral argument on the basis of the record and the presentations in the briefs. The court has determined that oral argument will not assist it in this case. See Fed. R. App. P. 34(a)(2); D.C. Cir. Rule 34(j).

Per Curiam

UNITED STATES COURT OF APPEALS
For the District of Columbia Circuit

NO. 09-5080 Spring Term 2009

1:08-cv-02254
August 23, 2010

Gregory S. Hollister, Appellant
v.
Barry Soetoro, in his capacity as a natural person; de facto President in posse; and as de jure President in posse, also known as Barack Obama, et al., Appellees

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Consolidated with 09-5161

BEFORE: Sentelle, Chief Judge, and Ginsburg, Henderson, Rogers, Tatel, Garland, Brown, Griffith, and Kavanaugh, Circuit Judges

ORDER

Upon consideration of the petition for rehearing en banc, and the absence of a request by any member of the court for a vote, it is

ORDERED that the petition be denied.

Per Curiam

UNITED STATES COURT OF APPEALS
For the District of Columbia Circuit

N0. 09-5080 Spring Term 2009

1:08-cv-02254

August 23, 2010

Gregory S. Hollister, Appellant
v.

Barry Soetoro, in his capacity as a natural person; de facto President in posse; and as de jure President in posse, also known as Barack Obama, et al.,

Appellees

Consolidated with 09-5161
BEFORE: Henderson, Tatel, and Garland, Circuit Judges

ORDER

Upon consideration of the petition for rehearing, the motion for recusal, and the motion to publish, it is

ORDERED that the petition be denied. It is

FURTHER ORDERED that the motion for recusal be denied to the extent that appellants seek recusal of the above-named judges. Appellants have not demonstrated the court's impartiality might reasonably be questioned. See 28 U.S.C. § 455(a). To the extent the motion seeks recusal of the district court judge and vacatur of the decisions that are the subject of the petition for rehearing, the motion is denied for the reason given in the court's judgment of March 22, 2010. Appellants have provided no reasonable basis for questioning the impartiality of the district court judge. See *Liteky v. United States*, 510 U.S. 540 (1994). Finally, the motion is dismissed as moot insofar as it seeks to remove the district court judge from the underlying civil action inasmuch as the case was terminated in March 2009. It is

FURTHER ORDERED that the motion to publish be denied. The judgment does not meet the criteria for publication under D.C. Circuit Rule 36(c).

Per Curiam

CONSTITUTIONAL PROVISIONS, TREATIES, STATUTES, ORDINANCES AND REGULATIONS

United States Constitution: Article II, Section 1, Clause 5:

No person except a natural born Citizen, or a Citizen of the United States, at the time of the Adoption of this Constitution, shall be eligible to the Office of President; neither shall any Person be eligible to that Office who shall not have attained to the Age of thirty-five Years, and been fourteen Years a Resident within the United States.

United States Constitution: Article I, Section 8, Clause 4:

The Congress shall have Power...,

* * * *

To establish an uniform Rule of Naturalization,...

Treaty: Nuremberg Convention; Principle IV

The fact that a person acted pursuant to order of his Government or of a superior does not relieve him from responsibility under international law, provided a moral choice was in fact possible to him.

The Rome Statute of 1998, the foundation of the International Criminal Court, Article 33: Superior orders and prescription of law:

1. The fact that a crime within the jurisdiction of the Court has been committed by a person pursuant to an order of a Government or of a superior, whether military or civilian, shall not relieve that person of criminal responsibility unless:
    - (a) The person was under a legal obligation to obey orders of the Governn ent or the superior in question;
    - (b) The person did not know that the order was unlawful; and
    - (c) The order was not manifestly unlawful.

28 U.S.C. § 1335, Interpleader

(a) The district courts shall have original jurisdiction of any civil action of interpleader or in the nature of interpleader filed by any person, firm, or corporation, association, or society having in his or its custody or possession money or property of the value of $500 or more, or having issued a note, bond, certificate, policy of insurance, or other instrument of value or amount of $500 or more, or providing for the delivery or payment or

the loan of money or property of such amount or value, or being under any obligation written or unwritten to the amount of $500 or more, if

(1) Two or more adverse claimants, of diverse citizenship as defined in subsection (a) or (d) of section 1332 of this title, are claiming or may claim to be entitled to such money or property, or to any one or more of the benefits arising by virtue of any note, bond, certificate, policy or other instrument, or arising by virtue of any such obligation; and if

(2) the plaintiff has deposited such money or property or has paid the amount of or the loan or other value of such instrument or the amount due under such obligation into the registry of the court, there to abide the judgment of the court, or has given bond payable to the clerk of the court in such amount and with such surety as the court or judge may deem proper, conditioned upon the compliance by the plaintiff with the future order or judgment of the court with respect to the subject matter of the controversy.

(b) Such an action may be entertained although the titles or claims of the conflicting claimants do not have a common origin, or are not identical, but are adverse to and independent of one another.

Federal Rules of Civil Procedure

Rule 22: Interpleader

(a) Grounds.

(1) By a Plaintiff.

Persons with claims that may expose a plaintiff to double or multiple liability may be joined as defendants and required to interplead. Joinder for interpleader is proper even though:

(A) the claims of the several claimants, or the titles on which their claims depend, lack a common origin or are adverse and independent rather than identical; or

(B) the plaintiff denies liability in whole or in part to any or all of the claimants.

(2) By a Defendant.

A defendant exposed to similar liability may seek interpleader through a crossclaim or counterclaim.

(b) Relation to Other Rules and Statutes.
This rule supplements — and does not limit — the joinder of parties allowed by Rule 20. The remedy this rule provides is in addition to — and does not

supersede or limit — the remedy provided by 28 U.S.C. §§ 1335, 1397, and 2361. An action under those statutes must be conducted under these rules.

28 U.S.C. § 1331. Federal question

The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.

Immigration and Nationality Act of 1952, 66 Stat. 163, § 301(a)(7):

TITLE III—NATIONALITY AND NATURALIZATION

CHAPTER 1—NATIONALITY AT BIRTH AND BY COLLECTIVE NATURALIZATION

NATIONALS AND CITIZENS OF THE UNITED STATES AT BIRTH

Sec. 301. (a) The following shall be citizens and nationals of the United States at birth:

* * * * *

(7) a person born outside the geographical limits of the United States and its outlying possessions of parents one of whom is an alien, and the other a citizen who, prior to the birth of such person, was physically present in the United States or its

outlying possessions for a period or periods totaling not less than ten years, at least five of which were after the attaining the age of fourteen years; ...

10 U.S.C. § 892. Art. 92. Failure to obey order or regulation

Any person subject to this chapter who—

(1) violates or fails to obey any lawful general order or regulation;

(2) having knowledge of any other lawful order issued by a member of the armed forces, which it is his duty to obey, fails to obey the order; or

(3) is derelict in the performance of his duties;

shall be punished as a court-martial may direct.

10 U.S.C. § 10101. Reserve components named

The reserve components of the armed forces are:

(1) The Army National Guard of the United States.

(2) The Army Reserve.

(3) The Navy Reserve.

(4) The Marine Corps Reserve.

(5) The Air National Guard of the United States.

(6) The Air Force Reserve.

(7) The Coast Guard Reserve.

10 U.S.C. § 10102. Purpose of reserve components

The purpose of each reserve component is to provide trained units and qualified persons available for active duty in the armed forces, in time of war or national emergency, and at such other times as the national security may require, to fill the needs of the armed forces whenever more units and persons are needed than are in the regular components.

10 U.S.C. § 10103. Basic policy for order into Federal service

Whenever Congress determines that more units and organizations are needed for the national security than are in the regular components of the ground and air forces, the Army National Guard of the United States and the Air National Guard of the United States, or such parts of them as are needed, together with units of other reserve components necessary for a balanced force, shall be

ordered to active duty and retained as long as so needed.

10 U.S.C. § 10110. Air Force Reserve: composition

The Air Force Reserve is a reserve component of the Air Force to provide a reserve for active duty. It consists of the members of the officers' section of the Air Force Reserve and of the enlisted section of the Air Force Reserve. It includes all Reserves of the Air Force who are not members of the Air National Guard of the United States.

10 U.S.C. § 10205. Members of Ready Reserve: requirement of notification of change of status

> (b) Each member of the Ready Reserve shall notify the Secretary concerned of any change in the member's address, marital status, number of dependents, or civilian employment and of any change in the member's physical condition that would prevent the member from meeting the physical or mental standards prescribed for the member's armed force.
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> Federal Rules of Civil Procedure
>
> Rule 15. Amended and Supplemental Pleadings
>
> (a) Amendments Before Trial.

(1) Amending as a Matter of Course.

A party may amend its pleading once as a matter of course within:

(A) 21 days after serving it, or

(B) if the pleading is one to which a responsive pleading is required, 21 days after service of a responsive pleading or 21 days after service of a motion under Rule 12(b), (e), or (f), whichever is earlier.

REVISED LAWS
of
HAWAII 1955

Chapter 57 Vital Statistics

Part 1. Territorial Public Health Statistics Act

Note: This part is based on the Unif. Vital Statistics Act

§57-1. Definition of terms. As used in this part, unless the context otherwise indicates:

(a) "public health statistics" includes the registration preparation, transcription, collection, compilation and preservation of data pertaining to births, adoptions, legitimations, deaths, fetal deaths, morbidity, marital status and data incidental thereto.

(b) "Live Birth" is the complete expulsion or extraction from its mother of a product of conception that did, after complete expulsion or extraction from the mother, breathe or show any other evidence of life such as beating of the heart, pulsation of the umbilical cord or movement of voluntary muscle, whether or not the umbilical cord was cut or the placenta attached.

(c) ....

(f) "Physician" means a person legally authorized to practice medicine, osteopathy, or the science of naturopathy in the Territory. [R.L. 1945, s. 3100-02; add L. 1949, c.327, s. 2; am. L. 1951, c. 92, s. 1.]

§57-2. **Authority and duties of the board of health.** The board of health, hereinafter referred to as the board, shall:

(a) Establish a central bureau of public health statistics with suitable offices properly equipped for the safety and preservation of all its public records;

(b) Establish a Territory-wide system of public health statistics;

(c) Make and amend, after notice and hearing, necessary regulations, give instructions and prescribe forms for collecting, transcribing, compiling and preserving public health statistics; and

(d) Enforce this part and the regulations made pursuant thereto. [R.L. 1945, s. 3100-03; add L. 1949, c. 327, s. 3.]

...

§57-8. **Compulsory registration of births.** Within the time prescribed by the board, a certificate of every birth shall be filed with the local registrar of the district within which the birth occurred, by the physician, midwife, or other legally authorized

person in attendance at the birth; or if not so attended, by one of the parents. . [R.L. 1945, s. 3100-09; add L. 1949, c. 327, s. 9.]

§57-9. Local registrar to prepare birth certificate.

(a) If neither parent of the newborn child whose birth is unattended as above provided is able to prepare a birth certificate, the local registrar shall secure the necessary information from any person having knowledge of the birth and prepare and file the birth certificate.

(b) The board shall prescribe the time within which a supplementary report furnishing information omitted on the original certificate may be returned for the purpose of completing the certificate. Certificates of birth completed by a supplementary report shall not be considered as "delayed" or "altered." [R.L. 1945, s. 3100-10; add L. 1949, c. 327, s. 10.]

...

§57-14. Form of certificates. The forms of certificates shall include as a minimum the items required by the respective standard certificates as recommended by the United States Public Health Service, the National Office of Vital Statistics, subject to approval of and modification by the board. The form and use of such certificates shall be subject

to the provisions of sections 57-19, 57-20, and 57-21. [R.L. 1945, s. 3100-15; add. L. 1949, c. 327, s. 15.]

§57-15. Evidentiary character of certificates. Certificates filed within thirty days after the time prescribed therefore shall be prima facie evidence of the facts therein stated. Data pertaining to the father of a child are prima facie evidence only if the alleged father is the husband of the mother; if not, the data pertaining to the father of a child are not evidence in any proceeding adverse to the interests of the alleged father, or of his heirs, next of kin, devisees, or other successors in interest, if the paternity is controverted. [R.L. 1945, s. 3100-16; add. L. 1949, c. 327, s. 16.]

§57.16. Same as to certified copies.

(a) Subject to the requirements of sections 57-19, 57-20 and 57-21, the registrar general shall, upon request, furnish to any applicant a certified copy of any certificate, or any part thereof.

(b) Copies of the contents of any certificate on file in the bureau of public health statistics or any part thereof, certified by the registrar general shall be considered for all purposes the same as the original, subject to the requirements of sections 57-19, 57-20, and 57-21. [R.L. 1945, s. 3100-17; add. L. 1949, c. 327, s. 17.]

...

§57-18. Delayed or altered certificates. A person born in the Territory may file or amend a certificate after the time prescribed, upon submitting such proof as shall be required by the board, except that no certificate of birth may be filed later than one year after birth. . [R.L. 1945, s. 3100-19; add. L. 1949, c. 327, s. 19.]

§57-19. Procedure concerning delayed and altered certificates.

(a) Certificates accepted subsequent to thirty days after the time prescribed for filing, and certificates which have been altered after eing filed with the registrar general, shall contain the date of the delayed filing and the date of the alteration, and be marked distinctly "delayed" or "altered."

(b) A summary statement of the evidence submitted in support of the acceptance for delayed filing or alteration shall be endorsed on the certificates.

(c) Such evidence shall be kept in a special permanent file. [R,K, 1945, s. 3100.20; add. L. 1949, c. 327, s. 20.]

§57-20. Delayed or altered certificate as evidence. The probative value of a "delayed" or "altered" certificate shall be determined by the judicial or administrative body or official before whom the

certificate is offered as evidence. [R.L. 1945, s. 3100.21; add. L. 1949, c. 327, s. 21]

§57-21. Disclosure of records.

(a) The records and files of the bureau of public health statistics are open to inspection, subject to the provisions of this part and regulations of the board; but it shall be unlawful for any officer or employee of the Territory to disclose data contained in public health statistics records, except as authorized by this part or by the board.

(b) ...

(c) The registrar general shall permit inspection of the records, or issue a certified copy of a certificate, or part thereof, unless he is satisfied that the applicant therefor has a direct and tangible interest in the matter recorded, and that the information contained therein is necessary for the determination of personal or property rights.

§57.22. Photostatic or typewritten copies of records. The registrar general is authorized to prepare typewritten or photostatic copies of any records and files in his office, which by reason of age, usage or otherwise are in such condition that they can no longer be conveniently consulted or used without danger of serious injury or destruction thereof, and to certify to the correctness of such copies. Such typewritten or photostatic copies shall be competent

evidence in all courts of the Territory with like force and effect as the original. [R.L. 1945, s. 3100.23; add. L. 1949, c. 327, s. 23.]

...

§57-29. Marriages, reported by whom. It shall be the duty of every person, legally authorized to perform the marriage ceremony, to immediately report every marriage ceremony, performed by him to the registrar of the district in which such marriage takes place, setting forth all facts required to be stated in a standard certificate of marriage, the form and contents of which shall be prescribed by the board. [R.L. 1945, s. 3100-30; add. L. 1949, c. 327, s. 30.]

...

PART II. CERTIFICATES OF HAWAIIAN BIRTH

§57-40. Issuance; procedure. The secretary of the Territory may, whenever satisfied that any person was born within the Territory, cause to be issued to such person a certificate showing such fact; provided, that such person has attained the age of one year. The secretary, wi the approval of the governor, may make such regulations respecting the form of application and certificates, the method of proof, kind of evidence and time, place and manner of hearing, and all other matters and circumstances

connected with such application, proof and hearing, as to him may appear necessary; and such regulations, when so approved and made in accordance with sections 7-28 to 7-41, shall have the force of law. The secretary shall furnish the form of such applications and certificates. All applications shall be sworn petition, in which the party shall set forth the facts upon which the application rests.

The secretary of the Territory, or his secretary, or such other person as he may designate and appoint from his office, may examine under oath, any applicant or person cognizant of the facts regarding any application, and for that purpose he may administer oaths, subpoena and compel the attendance of witnesses an the production of books and papers, punish for contempts and, generally, exercise the same authority with regard to his special jurisdiction as is, by law, conferred on district magistrates. [L. 1911, c. 96, s. 1; am. L. 1923, c. 246, s. 1; R.L. 1925, s. 196; am. L. 1927, c. 202, s. 1; R.L. 1935, S. 7610; R.L. 1945, s. 12910; am. L. 1951, c. 132, s. 1.]

...

§57-42. Fees. Fees shall be charged in connection with the issuance of such certificates as follows: for the filing of each application for a certificate, $5; for every certified copy of a certificate, $1, and, in addition, 50 cents for each one hundred words or portion thereof contained in such certificate;

provided, that such fees shall not be charged in connection with the issuance of such certificates to children under the age of sixteen years who are permanent inmates of homes or institutions in the Territory which are supported in whole or in part by public charity or taxation. All such fees collected shall be paid into the special fund created by section 57-41. [L. 1911, c. 96, s. 4; am. L. 1921, c. 30, s. 1; am. L. 1923, c. 246, s. 2; R.L. 1925, s. 199; R. L. 1935, s. 7614; am. L. 1935, c. 149, s. 1; R.L. 1945, s. 12914.]

§57-43. Certificates of prima facie evidence. Any certificate of Hawaiian birth heretofore issued under or by virtue of any law of the Territory, or which may be issued inconformity with the provisions of this part, shall be prima facie evidence of the facts therein stated. [L. 1911, c. 96, s. 3; R.L. 1925, s. 198; R.L. 1935, s. 7612; R.L. 1945, s. 12912.]

Supreme Court, U.S.
FILED

10-678 NOV 22 2010

Docket No. OFFICE OF THE CLERK

In The
SUPREME COURT OF THE UNITED STATES

GREGORY S. HOLLISTER, et al.,

Petitioners

v.

BARRY SOETORO, et al.,

Respondents.

On Petition for Writ of Certiorari
To the United States Court of Appeals
For the District of Columbia Circuit

APPENDIX
Volume II

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UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

Case: 1:08-cv-02254
Assigned To : Robertson James
Date: 12/31/2008

GREGORY S. HOLLISTER,
Plaintiff
vs..
BARRY SOETORO, a/k/a Barack Hussein Obama, in his capacity as a natural person; in his capacity as *de facto* President *in posse;* and in his capacity as *dejure* President *in posse*
and
JOSEPH R. BIDEN, JR., in his capacity as a natural person; in his capacity as *de jure* Acting President *in posse;* in his capacity as *de jure* President *in posse;* and in his capacity as *de jure* Vice-President *in posse;*
and
NATURAL and UN-NATURAL DOES 1-100 INCLUSIVE,
Defendants

COMPLAINT FOR INTERPLEADER AND DECLARTORY AND INJUNCTIVE RELIEF

Plaintiff through his Counsel, Philip J. Berg, Esquire and Lawrence J. Joyce, Esquire allege the following in support of his Complaint for Interpleader, declaratory and Injunctive Relief:

JURISDICTION AND VENUE

1. This is a claim in the nature of Interpleader, with Jurisdiction in this Court based upon 28 U.S.C. § 1335 with diversity of citizenship; there is complete diversity of citizenship between the Plaintiff and all Defendants in this suit. This case is also brought pursuant to the aforementioned statute and Federal Rule of Civil Procedure 22.

PARTIES

2. Plaintiff Gregory S. Hollister is a resident of the State of Colorado; Defendant Barry Soetoro a1k/a Barack Hussein Obama is a resident of Illinois, possibly Washington D.C. and may be a Foreign National; and Joseph R. Biden, Jr. is a resident of the State of Delaware and possibly Washington, D.C.

3. Plaintiff, Gregory S. Hollister, [hereinafter "Hollister"] is a citizen of the United States and a resident of 9235 Bell Cove Circle Colorado Springs, Colorado; 80920.

4. Defendant, Barry Soetoro a1k/a Baraek Hussein Obama, [hereinafter "Soetoro"] is an adult individual and is a resident of Illinois, possibly Washington, D.C., and may be a Foreign National with an office address of Presidential Transition Team, 451 Sixth Street, N.W., Washington, D.C. 20270;

5. Defendant, Joseph R. Biden, Jr. [hereinafter "Biden"] is a citizen of the United States with an office address of Presidential Transition Team, 451 Sixth Street, N.W., Washington, D.C. 20270 and is a resident of Delaware and possibly Washington,D.C.

FACTUAL ALLEGATIONS

6. Plaintiff Hollister is a retired Colonel from the United States Air Force. Hollister joined the United States Air Force and began active duty in 1978. Hollister served twenty [20] years of honorable service and retired in 1998.

7. Hollister took the Oath of Enlistment which states "I, *Gregory S. Hollister, do solemnly swear (or affirm) that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; and that I will obey the orders of the President of the Unit ed States and the orders of the officers appointed over me, according to regulations and the Uniform Code of Military Justice . So help me God"* [emphasis added]

8. As a result of Hollister having served a regular commission, he is in what is called the "Individual Ready Reserve." That means he is subject to Presidential recall for the rest of his life. Hollister's discharge papers are attached hereto as Exhibit "A".

9. Plaintiff is in possession of certain property. This property consists of duties owed by the Plaintiff to the Commander-in-Chief of the Armed Forces of the United States and to all others above Plaintiffs rank in his chain of command, and this property also consists of certain relationships. It has been held in the federal jurisdiction that property can pertain to intangible res. *Carpenter v. United States.* 484 U.S. 19,25-27, 108 S.Ct. 316, 320- 321,98 L.Ed.2d 275, 283-284 (1987). Other federal courts have stated that property can be recognized in other types of an intangible res as well. *First Victoria National Bank*

v. United States, 620 F.2d 1096, 1106-1107 (5th Cir. 1980) ("rice history acreage", like "good will of a business", is property); *Matter ofNichols,* 4 B.R. 711, 717 (E.D. Mich. 1980) (citing Black's Law Dictionary at 1095 for proposition that "property" encompasses all things "corporeal or incorporeal, tangible or intangible, visible or invisible ... "). Significantly, the District of Massachusetts has found that property can be recognized in a relationship, such as a landlord-tenant relationship, or an employer-employee relationship. *Glosband v. Watts Detective Agency, Inc.,* 21 B.R. 963, 971-972. (D. Mass. 1982).

10. The statute Plaintiff relies on for bringing this case in the nature of Interpleader does not state a requirement that the property be tangible or intangible. *Bank of Neosho v. Colcord,* 8 F.R.D. 621 (W.D. Mo. 1949) (a case in the federal jurisdiction in which an intangible *res* [a duty] was the subject of Interpleader). The Plaintiff has found no case in which a Court held that intangible *res* cannot be the subject of Interpleader; and the wording of the statute upon which the Plaintiff relies to bring this case in the nature of Interpleader must be considered in light of two holdings by the Supreme Court on statutory construction: *Martin* v. *Wilks,* 490 U.S. 760, 109 S.Ct. 2180, 104 L.Ed.2d 835 (1989) and *NOW v. Scheidler,* 510 U.S. 249,114 S Ct. 798,127 L.Ed.2d 99 (1994).

11. In light of *Martin* v. *Wilks* and *NOW* v. *Scheidler,* any attempt to read into the federal Interpleader statute a requirement that the property rights pertain only to a tangible *res* would constitute an impermissible addition of an element not contained in the statute itself.

12. Plaintiffs duties themselves are the duty to obey lawful orders, the duty to disobey at least certain unlawful orders, and the duty to support and defend the Constitution against all enemies, both foreign and domestic; put another way, the Plaintiff is in possession of obligations he owes to the Acting President or President (and all others above the Plaintiff in his chain of command) to receive the performance of these duties from the Plaintiff. Each of these duties is worth Five Hundred [$500 .00] Dollars.

13. The relationships are the superior/subordinate relationships that Plaintiff has with each person above him in the chain of command, including the Acting President or President, and the relationship Plaintiff and the Department of Defense reciprocally have with each other as employer/employee. Each of these relationships is worth Five Hundred [$500.00] Dollars or more.

14. Plaintiff has reason to believe that Soetoro may not be a "natural born" United States Citizen and therefore is not qualified pursuant to the United States Constitution to serve as President of the United States. Article II, Section I, CL 5 states that only a "natural born" United States citizen shall be eligible to the Office of President.

15. Plaintiff's questions regarding Soetoro's eligibility to serve as President of the United States pursuant to the Constitution arose when Plaintiff learned Soetoro may have been born in Kenya to a U.S. citizen mother and a foreign national. This was further complicated when Plaintiff learned that Soetoro attended a public school in Indonesia under the name of Barry Soetoro, as an Indonesian Citizen.

16. The American publics' knowledge of Soetoro is based in substantial part on his memoir, *"Dreams from my Father "*. Although Soetoro is silent about his birthplace in his Memoir he speaks in detail about his life in Indonesia. Unfortunately, Soetoro's records pertaining to his life are confidential either by being sealed or by statute, depriving Plaintiff and all citizens access to such documents.

17. Evidence points to the fact that Soetoro, at the time of birth his name was Barack Hussein Obama, was born at Coast Hospital in Mombasa, Kenya located in Coast Province. Soetoro's father was a Kenyan citizen and Soetoro's mother a United States citizen who was not old enough and did not reside in the United States long enough to register Soetoros birth in Hawaii as a "natural born" United States citizen.

18. Under the laws in effect between December 24, 1952 and November 14, 1986 (Soetoro was born in 1961), a child born outside of the United States to one citizen parent and one foreign national, could acquire "natural born" United States citizenship if the United States citizen parent had been physically present in the United States for ten (10) years prior to the child's birth, five (5) of those years being after age fourteen (14). Nationality Act of 1940, revised June 1952; *United States o(America v. Cervantes-Nava*, 281 F.3d 501 (2002), *Drozd v. I.N.S.*, 155 F.3d 81, 85-88 (2d Cir.1998), *United States v. Gomez-Orozco*, 188 F.3d 422, 426-27 (7th Cir. 1999), *Scales v. Immigration and Naturalization Service*, 232 F.3d 1159 (9th Cir. 2000), *Solis-Espinoza v. Gonzales*, 401 F.3d 1090 (9th Cir. 2005). Soetoro's mother was only eighteen (18) when Obama was born in Kenya and therefore, did not meet the age and residency requirements for her child to have acquired "natural

born" U.S. citizenship even under the statute. Therefore, Soetoro could not be a "natural born" United States citizen in any event under these facts. The law that applies to a birth abroad is the law in effect at the time of birth, *Marquez-Marquez a/k/a Moreno* v. *Gonzales,* 455 F. 3d 548 (5th Cir. 2006), *Runnett* v. *Shultz,* 901 F.2d 782, 783 (9th Cir.1990) (holding that "the applicable law for transmitting citizenship to a child born abroad when one parent is a U.S. citizen is the statute that was in effect at the time of the child's birth").

19. Soetoro's Kenyan grandmother, Sarah Obama, has repeatedly stated Soetoro was born in Kenya and she was present in the hospital during his birth. Bishop Ron McRae, who oversees the Anabaptists Churches in North America, and Reverend Kweli Shuhubia, had the opportunity in or about October 2008 to interview Sarah Obama. Reverend Kweli Shuhubia went to the home of Sarah Obama located in Kogello, Kenya. Reverend Kweli Shuhubia called Bishop McRae from Ms. Obama's home and placed the call on speakerphone. Bishop McRae asked if it was okay to tape the conversation, which permission was granted. Because Ms. Obama only speaks Swahili, Reverend Kweli Shuhubia and another grandson of Ms. Obama's translated the telephone interview. Bishop McRae asked Ms. Obama where Soetoro was born; Ms. Obama answered in Swahili and was very adamant that Soetoro was born in Kenya. Bishop McRae asked Ms. Obama if she was present during her grandson's birth and Ms. Obama answered, "Yes."

20. Reverend Kweli Shuhubia left after interviewing Ms. Obama, and traveled to Mombosa, Kenya. Reverend Kweli Shuhubia interviewed personnel at the hospital where Ms. Obama said Soetoro was born

in Kenya. Reverend Kweli Shuhubia then mmediately had meetings with the Provincial Civil Registrar. Reverend Kweli Shuhubia learned there were records of Ann Dunham giving birth to Barack Hussein Obama, Jr. in Mombosa, Kenya on August 4, 1961. Reverend Kweli Shuhubia spoke directly with an Official, the Principal Registrar, who openly confirmed that the birthing records of Soetoro under the name "Barack H. Obama, Jr." and his mother were present; however, the file on Barack H. Obama, Jr. was classified. The Official explained Barack Hussein Obama, Jr. 's birth in Kenya is top secret.

21. Soetoro continues to verbally deny he was born in Kenya and states he was born in Hawaii. Upon investigation into the alleged birth of Soetoro in Honolulu, Hawaii, Soetoro's birth is reported as occurring at two (2) separate hospitals, Kapiolani Hospital and Queens Hospital. The Rainbow Edition News Letter, November 2004 Edition, published by the Education Laboratory School did a several page article of an interview with Soetoro and his half-sister, Maya. The Rainbow Edition News Letter reports Soetoro was born August 4, 1961 at Queens Medical Center in Honolulu, Hawaii. In February 2008, Soetoro's half-sister, Maya, was again interviewed, this time by the Star Bulletin. Therein Maya stated that Soetoro was born August 4, 1961 in Kapiolani Medical Center for Women & Children. Obviously an attempt by Maya to validate a birth in Hawaii she knew did not occur.

22. Moreover, Soetoro allowed the Daily Kos, Factcheck and his campaign website to post a Hawaiian Certification of Live Birth (COLB), purported to be Soetoro's on their websites. There are several problems with this. The image posted on dailykos.com, factcheck.org and fightthesmears.com

has been deemed an altered and forged document according to document image specialists. Moreover, even if this documerit purported to be Soetoro's Certification of Live Birth was an accurate document, it still could not prove "natural born" U.S. citizenship status. The Hawaii Department of Health issues a Certification of Live Birth to births that occurred abroad in foreign countries as well as births that occurred at home and not in a hospital. Certifications of Live Birth are issued to those born as "naturalized" U.S. citizens as well as "natural born" U.S. citizens. It should be noted, Soetoro's sister, Maya Soetoro-Ng was born in Indonesia in 1970, she was born a "natural" citizen of Indonesia, however, her birth was registered in Hawaii as a birth abroad and she is only a "naturalized" citizen, not "natural born"; despite this she was issued a Hawaiian Certification of Live Birth (COLB).

23. A Certification of Live Birth is **not** sufficient evidence to prove one is in fact a "natural born" U.S. citizen.

24. Additionally, Dr. Fukino, Director of the Hawaiian Department of Health released a press release stating she saw Soetoro's "vault" version birth certificate in a file. Although, Dr. Fukino does not claim Soetoro was born in Hawaii or the U.S. for that matter, she does confirm the "vault" version birth certificate exists. Once again, Soetoro refuses to release access to this "vault" version birth certificate that if it were legitimate ' would show doctors signatures, city, state and country of birth, and of course would solve the issue of where he was in fact born.

25. It appears that Soetoro became an Indonesian citizen. When Soetoro was approximately four (4) years old his parents divorced and thereafter, Soetoro's mother, Stanley Ann Dunham, married Lola Soetoro, a citizen of Indonesia. Evidence points to the fact that Lolo Soetoro either signed a government form legally "acJowledging" Soetoro as his son or "adopted" Soetoro, either of which changed any citizenship status Soetoro had to a "natural" citizen of Indonesia.

26. All Indonesian students were required to carry government identity cards or *Karty Tanda Pendudaks,* as well as family card identification called a *Kartu Keluarga.* The *Kartu Keluarga* is a family card which bears the legal names and citizenship status of all family members.

27. Soetoro was registered in a public school as an Indonesian citizen by the name of Barry Soetoro and his father was listed as Lolo Soetoro, M.A. Indonesia did not allow foreign students to attend their public schools in the late 1960's or 1970's, and any time a child was registered for a public school, their name and citizenship status was verified through the Indonesian Government. See Constitution of Republic of Indonesia *(Undang-Undang Dasar Republik Indonesia 1945),* Chapter 13, Law No. 62 of 1958 (all citizens of Indonesia have a right to education). The school record, attached hereto as **Exhibit** "B", indicates that Soetoro's name is "Barry Soetoro;" his nationality 1s "Indonesia:" and his religion as "Islam". There was no way for Soetoro to have atteryded school III Jakarta, Indonesia legally unless he was an Indonesian citizen, as Indonesia was under tight rule and was a Police State. See

Constitution of Republic of Indonesia *(Undang-Undang Dasar Republik Indonesia* 1945), Law No. 62 of 1958. These facts indicate that Soetoro IS an Indonesian citizen, and therefore he is not eligible to be President of the United States.

28. Under Indonesian law, when a male acknowledges a child as his son, it deems the son, in this case Soetoro, an Indonesian State citizen. Constitution of Republic of Indonesia, Law No. 62 of 1958 concerning Immigration Affairs and Indonesian Civil Code (Kitab Undang-undang Hukum Perdata) (KUHPer) (Burgerlijk Wetboek voor Indonesie).

29. Furthermore, under the Indonesian adoption law, once an Indonesian citizen adopts a child, the adoption severs the child's relationship to the birth parents, and the adopted child is given the same status as a natural child and the child takes the name of his step-father, in this case, Soetoro. See Indonesian Constitution, Article 2.

30. The Indonesian citizenship law was designed to prevent apatride (stateless) or bipatride (dual) citizenship. Indonesian regulations recognized neither apatride nor bipatride (stateless or dual) citizenship. Since Indonesia did not allow dual citizenship; neither did the United States (since the United States only permitted dual citizenship when 'both' countries agree); and since Soetoro was a "natural" citizen of Indonesia, the United States would not step in or interfere with the laws of Indonesia. Hague Convention of 1930.

31. As a result of Soetoro's Indonesian "natural" citizenship status, Soetoro could never regain U.S. "natural born" status, if he in fact he ever held such, which we doubt. Soetoro could have **only** become "naturalized" if the proper paperwork were filed with the U.S. State Department, after going through U.S.

Immigration after his return to the United States; in which case, Soetoro would have received a certifica - tion of Citizenship indicating "naturalized. "

32. Plaintiff is informed, believes and thereon alleges Soetoro was never naturalized in the United States after his return. Soetoro was ten (10) years old when he returned to Hawaii to live with his grandparents Soetoro's mother did not return with him. Therefore, it appears that she did not apply for citizenship for Soetoro in the United States. If citizenship of Soetoro had been applied for in 1971, Soetoro would have a Certification of Citizenship. If Soetoro returned in 1971 to Hawaii without going through U.S. Immigration, today he would be an "illegal alien" – and obviously not able to serve as President, but also his term as a United States Senator from Illinois for nearly four (4) years was illegal. Plaintiff believes Soetoro might have reentered the United States at age ten (10) by showing a eopy of his aforementioned Hawaiian Certification of Live Birth or his Indonesian Passport.

33. Moreover, Plaintiff has been unable to locate any legal documents wherein Soetoro's name was legally changed from Barry Soetoro to BarackHussein Obama.

34. Plaintiff is literally caught between a rock and a hard place. If reactivated, he comes under a duty to obey lawful orders. He would come under a duty, under at least certain circumstances, to disobey unlawful orders. He would come under a duty to support and defend the Constitution against all enemies, both foreign and domestic. But to whom will these duties be owed from January 20, 2009 on? And against whom will these duties operate? Soetoro or Biden?

35. This dilemma is particularly distressful to the Plaintiff in light of the current state of the law on obeying or disobeying unlawful orders. The Armed Forces themselves construe their oath to obey orders to "require only that they obey **lawful** orders." See the *Uniform Code of Military Justice (UCMJ) 809.ART90 (20)* (military personnel need onlyobey the "lawful command of his superior officer"); *91.ART91* (2), (servicemernber must obey the "lawful order of a warrant officer"; *892.ART.92* (1) service member must obey the "lawful general order"), and *892.ART92* (2) ("lawful order"). And the courts have recognized even the affirmative duty of service members to disobey unlawful orders, most notably in the notorious "My Lai Massacre" case, *United States v. Ca/lev,* 22 USCMA 534, 48 CMR 19 (1973).

36. In the instant case, the first question Plaintiff is concerned about is, "Does *United States v. New,* 55 M;J. 95 (2001) apply to a case in which the claim by the person declaring that he is President is a claim that is false? And does this vary according to whether the claim to be President is 'palpably illegal on its face?'" See *New,* 55 MJ. at 108. *US.* v. *New* applies on its face to a soldier's duty to obey legal orders and disobey certain illegal orders, of course. But does it also apply with respect to the underlying question of whether the person giving the orders is even legitimately in office to give those orders in the first place?

37. Plaintiff faces the possibility of a conflict in his duties and multiple claims against him for the performance of these duties. It has been held that Interpleader may be brought even though no demand has yet been made on a Plaintiff for the property in question. *Dunbar* v. *Unite d States,* 502 F.2d 506

(5th Cir. 1974). Instead, the mere fact that the Plaintiff has a real, reasonable, bona fide fear of exposure to multiple claims or the hazards and vexation of conflicting claims is sufficient. *American Fidelity Fire Insuranc e Co.* v. *Construcciones Wal. Inc.,* 407 F. Supp. 164 (D. Virgin Islands 1975). See also, *Underwriters at Llovd's* v. *Nichols,* 363 F.2d 357 (8th Cir. 1966) (in such circumstances, court has a duty to allow Interpleader).

38. Plaintiff especially asks this Court to keep in mind that if Soetoro is sworn in, he could be blackmailed by anyone possessing *prima facie* evidence of his lack of natural-born citizenship. The blackmail could be for money, or could be for changing policy, whether foreign or domestic.

39. Plaintiff fears the hazards and vexations of multiple conflicting orders and responsibilities with respect to his aforementioned duties, all of which may interfere with, and may possibly sever, their relationships with all those above him in the chain of command, including, but not limited to, the Acting President or President, and all of which may interfere with, and may possibly sever, their employer/employee relationship with the Department of Defense. These hazards and vexations can include court-rnartials, incarceration, reduction in rank, loss of benefits and privileges, a dishonorable discharge, and claims against him for damages, all of which might come, possibly in contradictory manner, from more than one source of authority, or at least from more than one claimed source of authority, above him. Each of these injuries, and all of them, would constitute irreparable harm to the Plaintiff. With respect to relief from each of these injuries, and all of them, damages will not suffice for

Plaintiff, and there is no adequate remedy at law.
40. It is particularly important to the Plaintiff to know whether Soetoro is eligible to be President before he is reactivated because if Soetoro issues an order to reactivate him, he will have to know whether that is an. order he is required to obey, or perhaps (at least in certain cases) whether that is even an order he is required to disobey. The evidence that Soetoro is not a "natural-born" citizen is so substantial that as things stand right now, unless this COUlt affirmatively declares that Soetoro is indeed constitutionally qualified to be President, Plaintiff will be of the opinion that he must refuse to recognize as being lawful the reactivation order and any other orders to him pursuant to the reactivation order.
41. If the ordinary processes of law would then be available to the Plaintiff for a resolution of these conflicts upon their reactivation, perhaps his distress today would not be quite as pronounced as it is. But the ordinary processes of law would not be available to the Plaintiff in the event that he is reactivated. As this Court itself has held (and as was affirmed by the D.C. Circuit), Congress has by statute precluded members of the Armed Forces from having access to the Article III Courts until and unless they have first disobeyed an order and have been court-martialed for having done so, and all their appeals in the military courts have been exhausted. *United States ex eI.New v. Perry,* 919 F. Supp. 491 (D.D.C. 1996); *aff'd sub nom. New v. Cohen,* 129 F.3d 639 (D.C. Cir. 1997), *cert. den.,* 523 U.S. 1048, 118 S.Ct. 1364, 140 .Ed.2d 513.
42. Thus, the ordinary processes of the law in the Article III Courts are not available to the Plaintiff for a consideration of his plight once he is reactivated

and deemed in active status. This, of course, adds to all the other grounds the Plaintiff has for having a real, reasonable, bona fide fear of exposure to multiple claims or the hazards and vexation of conflicting claims.

43. Plaintiff's concern over how to conduct himself, and his concern over multiple conflicting civil and criminal claims against him if Soetoro is sworn in is further increased by a recent Supreme Court decision, *Nguven v. United States,* 539 U.S. 69 (2003). In *Nguven* the Supreme Court took note of the fact that the usual rule regarding the acts of *de facto* officers is that ordinarily they are equally valid as those of *de jure* officers. The Court held nonetheless that the judgment of the Ninth Circuit had to be vacated on the grounds that there was a constitutional defect in the authority of the Article IV Court Judge to hear the appeals. *Nguye n v. United States,* 539 U.S. 69, 77-81, 123 S.Ct. 2130,2135-2137, 156 L.Ed.2d 64, 75-78 (2003).

44. Plaintiff is in need of the assistance of this Court. Without a determination by competent authority as to whether Soetoro is or isn't constitutionally eligible to be President, the Plaintiff will be left on his own to determine his duties should he receive what is purported to be his reactivation orders from Soetoro, or conflicting orders from his superiors in the chain of command, or orders which may conflict with his duty to support and defend the Constitution. In that respect, the Plaintiff retains an interest in the alleged properties at issue in this case. Accordingly, if this Court does find that Soetoro is indeed constitutionally qualified to hold the Office of President, Plaintiff will need for this Court to base such a finding upon a clear showing by affirmative

evidence, consistent with Soetoro's burden of proof under Interpleader, that Soetoro is indeed a "natural born" United States citizen and qualified to be President in order to reduce any possibility that the deference to this Court might start to weaken among those above them in the chain of command with respect to this most crucial issue concerning the various duties of all members of the Armed Forces of the United States.

45. This Court has to act now. Judgment on the merits is the only thing that can prevent a horrible state of affairs for the Plaintiff and the members of our Armed Forces, the Courts and the nation. Plaintiff, members of the Armed Forces and the civilian populace have to know, and they have a right to know, who is lawfully entitled to be the Commander-in-Chief of the Armed Forces of the United States---who is lawfully entitled to "push the button", and who is not.

46. In that hour when-v-God forbid---it actually becomes necessary to decide, one way or the other, whether to use America's nuclear arsenal, will the senior members of our military be under a legal duty to obey the orders of the would-be Commander-in-Chief, or will they be under a legal duty to disobey the order of an apparent enemy (foreign, or domestic) of the Constitution who holds the office of President? We ask the Court to bear in mind that, depending on what facts are ascertained at trial, the Court may conclude that Soetoro is in fact, right now, an illegal alien.

47. The bottom line, then, is this: As things stand now, without this Court's intervention, the Plaintiff in the instant case will be left completely out in the cold following Inauguration Day if he should happen to face a possible conflict between his duties to obey lawful orders on the one hand and his duties to disobey unlawful orders and defend the Constitution on the other hand, particularly if the unlawful order is "palpably illegal on its face", whatever their "interpretation of applicable law" may be, especially if the would-be Commander-in-Chiefs claim to hold office is palpably subject to disbelief simultaneously. And if this is the case with respect to this Plaintiff, what then will likewise be the case for the Joint Chiefs of Staff if Soetoro is in fact sworn in? Dare he speak up beforehand, if no national crisis is at hand? And will it be too late for him to speak up if in fact a national crisis does later on develop?
48. Plaintiff moves this Court for the Court's Orders to be issued nunc pro tunc in the event this Court declares Soetoro to be constitutionally ineligible to serve as President of the United States, after Soetoro has been sworn in.

FIRST CAUSE OF ACTION Claim for Relief Interpleader 28 U.S.c. § 1335 and F.R.C.P. 22

49. Plaintiff hereby incorporates Paragraphs 1 through 48 as if fully set forth herein.
50. Plaintiff is in possession of certain property. This property consists of the rights pertaining to the duties owed by the Plaintiff to the Commander-in-Chief of the Armed Forces of the United States and to all others above him in his chain of command, and this property also consists of certain relationships. The rights pertaining to each of these duties is worth

Five Hundred [$500.00] Dollars or more. The rights pertaining to each of these relationships is worth Five Hundred [$500.00] Dollars or more. Plaintiff will deposit with this Court, if necessary, a Bond in the amount of Two Thousand [$2,000.00] Dollars for the combined sum of the properties that the Plaintiff possesses pertaining to the duties and relationships alleged in this Complaint.

51. Plaintiff is also in possession of Soetoro's Indonesian School Record showing his name as Barry Soetoro and his citizenship status as Indonesian, and Plaintiff is in possession of his discharge document and has requested copies of his own enlistment papers. The document denominated as Soetoro's Indonesian School Record showing his name as Barry Soetoro and his citizenship status as Indonesian has a value of Five Hundred [$500.00] Dollars or more; Plaintiffs discharge document has a value of Five Hundred [$500.00] or more and has been deposited with this Court. Plaintiff has requested copies of his enlistment papers, which likewise have a value of Five Hundred [$500.00] Dollars or more, and copies of this documents will be deposited with this Court once they are received from United States Department of Defense. Of course, Plaintiffs original enlistment papers are in the possession of the United States Department of Defense.

52. Plaintiff knows that each of the Defendants, and those acting under either of them, may have competing rights between themselves to the property rights in these duties, relationships, and documents, and the right to claim all the property rights with respect to all of these duties, relationships, and documents shall belong to either Soetoro or Biden as of Noon, Eastern Standard Time, on January 20, 2009, but

Plaintiff does not know which of these two persons may properly claim the property rights in these duties, relationships, and documents.

53. Plaintiff has a real, reasonable, bona fide fear of exposure to multiple claims or the hazards and vexation of conflicting claims brought by either or both of the Defendants, or by those acting under either of them.

54. Likewise, the document denominated as Soetoro's Indonesian School Record showing his name as Barry Soetoro and his citizenship status as Indonesian, which we have filed with this Court as **Exhibit** "B", is a chattel of peculiar value not fungible with other chattels, and the Plaintiff has a real, reasonable, bona fide fear that he could be subject to injunctive relief over it and possible criminal prosecution by Soetoro, Biden or those acting under either of them for unlawfully withholding it.

55. Plaintiff's discharge documents, which is filed with this Court as **Exhibit** "A", and his enlistment papers are also chattels of a peculiar value not fungible with other chattels, and the Plaintiff has a real, reasonable, bona fide fear that if he is expelled from the military by Soetoro or Biden or by those acting under either of them, the substance of the provisions of those papers would lose much of their meaning and value.

56. By virtue of these fears and concerns, which, if realized, would subject Plaintiff to irreparable harm as to which damages would not suffice, and as to which there is no adequate remedy at law, Plaintiff is entitled to use Interpleader under 28 U.S.c. §1335 and Federal Rule of Civil Procedure 22 to join Soetoro and Biden as Defendants to cause them to come forward with the proof of Soetoro's constitution-

al eligibility to serve as President of the United States pursuant to Article II, § I, Cl. 5 of the U.S. Constitution and proof as to which of them may be entitled to the rights pertaining to the property which the Plaintiff alleges that he holds, so that Plaintiff might receive from this Court a declaration of the Plaintiff's rights and duties with respect to each Defendant, and Injunctive Relief as may be appropriate against either or both Defendants on behalf of the Plaintiff.

WHEREFORE, Plaintiff respectfully prays that this Court:

A. Declare Barry Soetoro a/kJa Barack Hussein Obama, in his capacity as a natural person is hereby **constitutionallv ineligible** to be President of the United States pursuant to Article II, § 1, Cl. 5 of the Constitution of the United States and the same is hereby Ordered to refrain from assuming, or taking the oath of, said office or exercising the duties and functions thereof, and to refrain from interfering with, or claiming, the properties of the Plaintiff alleged in this Complaint; or

B. Declare Barry Soetoro *alkJa* Barack Hussein Obama, in his capacity as *de facto* President of the United States *in posse* is hereby **constitutionally ineligible** to be President of the United States pursuant to Article II, § 1, Cl. 5 of the Constitution of the United States and the same is hereby Ordered to refrain from assuming, or taking the oath of, said office or exercising the duties and functions thereof, and to refrain from interfering with, or claiming, the properties of the Plaintiff alleged in this Complaint; or

C. Declare if this Court finds on the merits that Barry Soetoro a/k/a Barack Hussein Obama is not eligible to be President after Barry Soetoro a/kJa Barack Hussein Obama has been sworn in as President, that Barry Soetoro a/k/a Barack Hussein Obama is further barred and prohibited *nunc pro tunc* from holding the Office of President and from exercising the functions and duties of said Office, and from interfering with, or making any claim to, the properties of the Plaintiff alleged in this Complaint; and

D. Order Plaintiff to refrain from recognizing Barry Soetoro *a/k/a* Barack Hussein Obama as President of the United States and Commander-in-Chief of the Armed Forces thereof; or

E. Declare Barry Soetoro a/kJa Barack Hussein Obama, in his capacity as a natural person is hereby eligible to be President of the United States, pursuant to Article II, § 1, Cl. 5 of the Constitution of the United States, and that he may rightfully claim the properties of the Plaintiff alleged in this Complaint upon assuming the Office of President of the United States; or

F. Declare Barry Soetoro *alkJa* Barack Hussein Obama, in his capacity as *de jure* President of the United States *in posse* is hereby eligible, pursuant to Article II § I , Cl. 5 of the Constitution of the United States, to be President of the United States, and that he may rightfully claim the properties of the Plaintiff alleged in this Complaint upon assuming the Office of President of the United States; and

G. Order Plaintiff to recognize Barry Soetoro a/k/a Barack Hussein Obama as *de jure* President of the United States and Commander-in-Chief of the

Armed Forces thereof from the time of his Inauguration into that office and Joseph R. Biden as *de jure* Vice-President of the United States from the time of his inauguration into that office, for the term of each office beginning at Noon, Eastern Standard Time, January 20, 2009; or

H. Order Plaintiff to look to Joseph R. Biden for Orders if this Court finds Barry Soetoro a/k/a Barack Hussein Obama constitutionally ineligible pursuant to Article II, § 1, Cl. 5 of the U.S. Constitution; and

I. Retain Jurisdiction of this action to ensure the Court's Orders are being fully enforced; and

J. Award Plaintiff his Attorney Fees and Costs and Grant Plaintiff such other and further relief as this Honorable Court deems just and proper.

Respectfully submitted,
Dated: December 31 , 2008

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9235 Bell Cove Circle
Colorado Springs, Colorado 80920

DD FORM 214 WORKSHEET

1. Name (Last, First, Middle) HOLLISTER GREGORY SCOTT

2. DEPARTMENT, COMPONENT AND BRANCH AIR FORCE – REG AF

3. SOCIAL SECURITY NO. XX/XX/XXXX

4(a) GRADE, RATE OR RANK COLONEL

4(b). PAY GRADE 06

5 DATE OF BIRTH XX/XX/XXXX

6. RESERVE OBLIG. TERM. DATE. Year N/A

7(a) PLACE OF ENTRY INTO ACTIVE DUTY COLORADO SPRINGS CO

7(b) HOME OF RECORD AT TIME OF ENTRY (City and state, or complete address if known) HORNELL NY

8(a) LAST DUTY ASSIGNMENT AND MAJOR COMMAND 50 COMM GP (AFSPC)

8(b) STATE WHERE SEPARATED FALCON AFB

CO

9. COMMAND TO WHICH TRANSFERRED
NOT APPLICABLE

10. SGLI COVERAGE Amount $200,000

11. PRIMARY SPECIALTY (List number, title, and years and months in specialty. List additional specialty numbers and titles involving period of one or more years
020C0 – LOGISTICS COMMANDER 1 YR 04 MOS
C3384 – COMMUNICATIONS AND
INFORMATION/ COMMANDER – 18 YRS 10 MOS

12. RECORD OF SERVICE

	Year(s)	Month(s)	Day(s)
a. Date Entered AD This Period	1978	May	31
b. Separation Date This Period	1998	Jul	31
c. Net Active service This Period	20	02	01
d. Total Prior Active Service	00	00	00
e. Total Prior Inactive Service	00	00	00
f. Foreign Service	01	11	19
g. Sea Service	00	00	00
h. Effective Date of Pay Grade	1996	Aug	01

13. DECORATIONS, MEDALS, BADGES,
CITATIONS AND CAMPAIGN RIBBONS

AWARDED OR AUTHORIZED (All periods of service)
Defense Meritorious Service Medal, Meritorious service Medal with S devices, Air Force Training Ribbon Air Force Overseas Long Tour Ribbon, National Defense Service Medal with 1 device, Air Force SEE REMARKS

14. MILITARY EDUCATION (Course title, number of weeks, and month and year completed)
Air Command and Staff College – 40 weeks, Armed Forces Staff College – 9 weeks, Graduate Tele processing Science – 51 weeks, squadron Officer School – 9 weeks, Communications Sytems Officer – 32 weeks, Survival SEE REMARKS

15a.MEMBER CONTRIBUTED TO POST0VIETNAM ERA VETERANS' EDUCATIONAL ASSISTANT PROGRAM NO

16b. HIGH SCHOOL GRADUATE OR EQUIVALENT YES

16. DAYS ACCRUED LEAVE PAID 79.

17. MEMBER WAS PROVIDED COMPLETE DENTAL EXAMINATION AND ALL APPROPRIATE DENTAL SERVICES AND TREATMENT WITHIN 60 DAYS PRIOR TO SEPARATION NO

18. REMARKS. ITEM 13: Longevity service award with 4 devices, Air Force Outstanding Unit award with 1 device, Joint Meritorious Unit Award, Air Force Organizational Excellence Award with 2 devices, Legion of Merit. ITEM 14: Training – 4 weeks, Water Survival – 2 days, Squadron Officer School – 32 weeks, Computer System Staff Officer – 5 weeks, Air Command and staff College (Corres) – 40 weeks, Air War College – 40 weeks, Joint Executive Forum on Communications-Computer – 1 week, Marine Corps Comm and Staff College – 43 weeks, Base Commander Course – 1 wee.
Subject to Recall to active duty and/or annual screening.

19a. Mailing address after separation (include Zip Code) [redact]

19b. Nearest Relative (Name and address – include Zip Code) ALVIN D. PEC 2760 CLARENDON COLORADO SPRINGS CO 80916

20. MEMBER REQUESTS COPY AND SE SENT TO CO DIR OF VET AFFAIRS YES

21. SIGNATURE OF MEMBER BEING SEPARATED /S/ GREGORY S. HOLLISTER

22. OFFICIAL AUTHORIZED TO SIGN (TYPED

NAME, GRADE, TITLE AND SIGNATURE /s/
Raymond A. Nivens, TSGT, USAF, NCOIC,
Personnel Relocations

SPECIAL ADDITIONAL INFORMATION (for use by authorized agencies only)

23. TYPE OF SEPARATION voluntary retirement

24. character of service (include upgrades)
HONORABLE

25. SEPARATION AUTHORITY AFI 36-3203

26. SEPARATION CODE RBD

27. REENTRY CODE NOT APPLICABLE

29. DATES OF TIME LOST DURING THIS PERIOD NONE

30. NUMBER REQUESTS COPY 4

1. NAME (LAST,FIRST/MI) HOLLISTER
GREGORY SCOTT

2. DEPARTMENT, COMPONENT AND BRANCH
AUR FORCE – REG AF

3. SOCIAL SECURITY [REDACTED]

4a. GRADE, RATE, OR RANK COLONEL

4b PAY GRADE 06

4c. DATE OF SEPARATION 1998 Jul 31

Copy 5 - Louisiana Claims Control Center, UCX/UCFE, PO Box 94245, Capital Stations, Baton Route, LA 70804-9246
Copy 3 – Department of Veterans affairs, Data Processing Center (214), 1614 E. Woodward St., Austin, TX 78772
---------NOTHING FOLLOWS ----------

/s/ HOLLISTER GREGORY SCOTT
/s/ RAYMOND A. NIVENS, TSGT, NCOIC, Personnel Affairs

UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF COLUMBIA

CIVIL ACTION NO. 1:08-cv-02254 JR

GREGORY S. HOLLISTER, *Plaintiff* :

vs.

BARRY SOETORO, a/k/a
Barack Hussein Obama, in
his capacity as a natural
person; in his capacity as *de*
facto President *in posse*; and
in his capacity as *de jure*
President *in posse*
and
JOSEPH R. BIDEN, JR., in his capacity as a
natural person; in his capacity as: *de jure*
Acting President *in posse*; in his capacity as
de jure President *in posse*; and in his
capacity as *de jure* Vice- President *in posse*;
and
NATURAL and UN NATURAL DOES 1-100
INCLUSIVE, *Defendants*

PLAINTIFF'S FIRST AMENDED COMPLAINT

Plaintiff through his Counsel, Philip J. Berg, Esquire and Lawrence J. Joyce, Esquire allege the

following in support of his Complaint for Interpleader, Declaratory and Injunctive Relief:

JURISDICTION AND VENUE

1. This is a claim in the nature of Interpleader, with Jurisdiction in this Court based upon 28 U.S.C. § 1335 with diversity of citizenship; there is complete diversity of citizenship between the Plaintiff and all Defendants in this suit.

2. Plaintiff Gregory S. Hollister is a resident of the State of Colorado; Defendant Barry Soetoro a/k/a Barack Hussein Obama is a resident of Illinois, Possibly Washington, D.C. and may be a Foreign National; and Joseph R. Biden, Jr. is a resident of the State of Delaware and possibly Washington, D.C.

PARTIES

3. Plaintiff, Gregory S. Hollister [hereinafter "Hollister"] is a citizen of the United States and a resident of Colorado Springs, Colorado;

4. Defendant, Barry Soetoro a/k/a Barack Hussein Obama, [hereinafter "Soetoro"] is an adult individual and is a resident of Illinois, possibly Washington, D.C., and may be a Foreign National with an office address of The White House, 1600 Pennsylvania Avenue, N.W., Washington, D.C.

5. Defendant, Joseph R. Biden, Jr. [hereinafter "Biden"] is a citizen of the United States with a residence at One Observatory Circle, N.W., Washington, D.C. and is a resident of Delaware and possibly Washington, D.C., with an office address of The White House, 1600 Pennsylvania Avenue, N.W., Washington, D.C. 20500.

FACTUALALLEGATIONS

6. Plaintiff Hollister is a retired Colonel from the United States Air Force. Hollister joined the United States Air Force and began active duty in 1978. Hollister served twenty [20] years of honorable service and retired in 1998.

7. Hollister took the Oath of Enlistment which states *"I, Gregory S. Hollister, do solemnly swear (or affirm) that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; and that I will obey the orders of the President of the United States and the orders of the officers appointed over me, according to regulations and the Uniform Code of Military Justice. So help me God."* [emphasis added]

8. In addition to the enlistment Oath, Hollister was an Officer of the United States Military and therefore took an oath to support and defend the Constitution of the United States against all enemies foreign and domestic and he would bear true faith and allegiance to the same. Hollister further took

the Officer's Oath stating he took the obligation freely, without any mental reservation or purpose of evasion and that he will well and faithfully discharge his duties of the Office in which he serves so help him God.

9. Officers in the United States armed Forces, including Hollister, do not swear an oath to the President, the Congress or the Department of Defense. Their Oath is to the United States Constitution.

10. As a result of Hollister having served a regular commission, he is in what is called the "Individual Ready Reserve." That means he is subject to Presidential recall for the rest of his life. Hollister's discharge papers are attached hereto as **EXHIBIT "A"**.

11. Plaintiff is in possession of certain property. This property consists of duties owed by the Plaintiff to the Commander-in-Chief of the Armed Forces of the United States and to all others above Plaintiff's rank in his chain of command, and this property also consists of certain relationships. It has been held in the federal jurisdiction that property can pertain to an intangible res. *Carpenter v. United States*, 484 U.S. 19, 25-27, 108 S.Ct. 316, 320-321, 98 L.Ed.2d 275, 283-284 (1987). Other federal courts have stated that property can be recognized in other types of intangible res as well. *First Victoria National Bank v. United States*, 620 F.2d 1096, 1106-1107 (5th Cir. 1980) ("rice history acreage", like

"good will of a business", is property); *Matter of Nichols*, 4 B.R. 711, 717 (E.D. Mich. 1980) (citing Black's Law Dictionary at 1095 for proposition that "property" encompasses all things "corporeal or incorporeal, tangible or intangible, visible or invisible..."). Significantly, the District of Massachusetts has found that property can be recognized in a relationship, such as a landlord-tenant relationship, or an employer-employee relationship. *Glosband v. Watts Detective Agency, Inc.*, 21 B.R. 963, 971-972. (D. Mass. 1982)

12. The statute Plaintiff relies on for bringing this case in the nature of Interpleader does not state a requirement that the property be tangible or intangible. *Bank of Neosho v. Colcord*, 8 F.R.D. 621 (W.D. Mo. 1949) (a case in the federal jurisdiction in which an intangible *res* [a duty] was the subject of Interpleader). The Plaintiff has found no case in which a Court held that intangible *res* cannot be the subject of Interpleader; and the wording of the statute upon which the Plaintiff relies to bring this case in the nature of Interpleader must be considered in light of two holdings by the Supreme Court on statutory construction: *Martin v. Wilks*, 490 U.S. 760, 109 S.Ct. 2180, 104 L.Ed.2d 835 (1989) and *N.O.W. v. Scheidler*, 510 U.S. 249, 114 S.Ct. 798, 127 L.Ed.2d 99 (1994)

13. The duties which Plaintiff Hollister has toward the Commander-In-Chief of the Armed Forces of the United States, and to all others above him in his chain of command, also constitute

obligations owed by the Plaintiff to the Commander-In-Chief and to all others above him in his chain of command.

14. In light of *Martin v. Wilks* and *N.O.W. v. Scheidler*, any attempt to read into the federal Interpleader statute a requirement that the property rights pertain only to a tangible *res* or that the obligations would have to constitute the tendering of a tangible *res* would constitute an impermissible addition of an element not contained in the statute itself.

15. Plaintiff's duties themselves are the duty to uphold our United States Constitution, obey lawful orders, the duty to disobey at least certain unlawful orders, and the duty to support and defend the Constitution against all enemies, both foreign and domestic; put another way, the Plaintiff is in possession of obligations he owes to the Acting President or President (and all others above the Plaintiff in his chain of command) to receive the performance of these duties from the Plaintiff. Each of these duties is worth Five Hundred [$500.00] Dollars or more.

16. The relationships are the superior/subordinate relationships that Plaintiff has with each person above him in the chain of command; including the Acting President or President, and the relationship Plaintiff and the Department of Defense reciprocally have with each other as employer/employee. Each of these relationships is

worth Five Hundred [$500.00] Dollars or more.

17. Plaintiff has reason to believe that Soetoro may not be a "natural born" United States Citizen and therefore is not qualified pursuant to the United States Constitution to serve as President of the United States. Article II, Section I, Cl. 5 states that only a "natural born" United States citizen shall be eligible to the Office of President.

18. Plaintiff's questions regarding Soetoro's eligibility to serve as President of the United States pursuant to the Constitution arose when Plaintiff learned Soetoro may have been born in Kenya to a U.S. citizen mother and a foreign national. This was further complicated when Plaintiff learned that Soetoro attended a public school in Indonesia under the name of Barry Soetoro, as an Indonesian Citizen.

19. Furthermore, there is concern that Soetoro registered as a foreign national at Occidental College, Columbia University and Harvard Law School.

20. The American public's [Note: "public" is in and of itself plural; accordingly, the possessive is "public's", knowledge of Soetoro is based in substantial part on his memoir, *Dreams from my Father*. Although Soetoro is silent about his birthplace in his Memoir, he speaks in detail about his life in Indonesia. Unfortunately, Soetoro's records pertaining to his life are confidential either by being sealed or by statute, depriving Plaintiff and all citizens access to such documents.

21. Evidence points to the fact that Soetoro's name at the time of his birth was Barack Hussein Obama, and that he was born at Coast Hospital in Mombasa, Kenya located in Coast Province. Soetoro's father was a Kenyan citizen and Soetoro's mother a United States citizen who was not old enough and did not reside in the United States long enough to register Soetoro's birth in Hawaii as a "natural born" United States citizen.

22. Under the laws in effect between December 24, 1952 and November 14, 1986 (Soetoro was born in 1961), a child born outside of the United States to one citizen parent and one foreign national, could acquire "natural born" United States citizenship if the United States citizen parent had been physically present in the United States for ten (10) years prior to the child's birth, five (5) of those years being after age fourteen (14). Nationality Act of 1940, revised June 1952; *United States of America v. Cervantes-Nava*, 281 F.3d 501 (2002), *Drozd v. I.N.S.*, 155 F.3d 81, 85-88 (2d Cir.1998), *UnitedStatesv.Gomez-Orozco*, 188 F.3d 422, 426-27 (7th Cir. 1999), *Scales v. Immigration and Naturalization Service*, 232 F.3d 1159 (9th Cir. 2000), *Solis-Espinoza v. Gonzales*, 401 F.3d 1090 (9th Cir. 2005). Soetoro's mother was only eighteen (18) when Soetoro a/k/a Obama was born in Kenya and therefore she did not meet the age and residency requirements for her child to have acquired "natural born" U.S. citizenship under the statute, even assuming that a statute could confer

natural-born citizenship status. Therefore, Soetoro could not be a "natural born" United States citizen in any event under these facts. The law that applies to a birth abroad is the law in effect at the time of birth, *Marquez-Marquez a/k/a Moreno v. Gonzales*, 455 F. 3d 548 (5th Cir. 2006), *Runnett v. Shultz*, 901 F.2d 782, 783 (9th Cir.1990) (holding that "the applicable law for transmitting citizenship to a child born abroad when one parent is a U.S. citizen is the statute that was in effect at the time of the child's birth").

23. Soetoro's Kenyan grandmother, Sarah Obama, has repeatedly stated that Soetoro was born in Kenya and that she was present in the hospital during his birth. Bishop Ron McRae, who oversees the Anabaptists Churches in North America, and Reverend Kweli Shuhubia, had the opportunity in or about October 2008 to interview Sarah Obama. Reverend Kweli Shuhubia went to the home of Sarah Obama located in Kogello, Kenya. Reverend Kweli Shuhubia called Bishop McRae from Ms. Obama's home and placed the call on speakerphone. Bishop McRae asked if it was okay to tape the conversation, which permission was granted.

Because Ms. Obama only speaks Swahili, Reverend Kweli Shuhubia and another grandson of Ms. Obama translated the telephone interview. Bishop McRae asked Ms. Obama where Soetoro was born; Ms. Obama answered in Swahili and was very adamant that Soetoro was born in Kenya.

Bishop McRae asked Ms. Obama if she was present during Soetoro's birth and Ms. Obama answered, "Yes."

24. Reverend Kweli Shuhubia left after interviewing Ms. Obama, and traveled to Mombosa, Kenya. Reverend Kweli Shuhubia interviewed personnel at the hospital where Ms. Obama said Soetoro was born in Kenya. Reverend Kweli Shuhubia then immediately had meetings with the Provincial Civil Registrar. Reverend Kweli Shuhubia learned there were records of Ann Dunham giving birth to Barack Hussein Obama, Jr. in Mombosa, Kenya on August 4, 1961. Reverend Kweli Shuhubia spoke directly with an Official, the Principal Registrar, who openly confirmed that the birthing records of Soetoro under the name "Barack H. Obama, Jr." and his mother were present; however, the file on Barack H. Obama, Jr. was classified. The Official explained Barack Hussein Obama, Jr.'s birth in Kenya is top secret.

25. Soetoro continues to verbally deny he was born in Kenya and states he was born in Hawaii. Upon investigation into the alleged birth of Soetoro in Honolulu, Hawaii, Soetoro's birth is reported as occurring at two (2) separate hospitals, Kapiolani Hospital and Queens Hospital. The Rainbow Edition News Letter, November 2004 Edition, published by the Education Laboratory School did a several page article of an interview with Soetoro and his half-sister, Maya. The

Rainbow Edition News Letter reports Soetoro was born August 4, 1961 at Queens Medical Center in Honolulu, Hawaii. In February 2008, Soetoro's half- sister, Maya, was again interviewed, this time by the Star Bulletin. Therein Maya stated that Soetoro was born August 4, 1961 in Kapiolani Medical Center for Women & Children.

26. Moreover, Soetoro allowed the Daily Kos, Factcheck and his campaign website to post a Hawaiian Certification of Live Birth (COLB), purported to be Soetoro's on their websites. There are several problems with this. The image posted on dailykos.com, factcheck.org and fightthesmears.com has been deemed an altered and forged document according to document image specialists. Moreover, even if this document purported to be Soetoro's Certification of Live Birth was an accurate document, it still could not prove "natural born" U.S. citizenship status.

The Hawaii Department of Health issues a Certification of Live Birth to births that occurred abroad in foreign countries as well as births that occurred at home and not in a hospital. Certifications of Live Birth are issued to those born as "naturalized" U.S. citizens as well as "natural born" U.S. citizens. It should be noted, Soetoro's sister, Maya Soetoro-Ng was born in Indonesia in 1970. She was born a "natural" citizen of Indonesia. However, her birth was registered in Hawaii as a birth abroad and she is only a "naturalized" citizen, not "natural born"; despite

his she was issued a Hawaiian Certification of Live Birth (COLB).

27. A Certification of Live Birth is not sufficient evidence to prove one is in fact a "natural born" U.S. citizen. In fact, a Certification of Live birth is not even sufficient evidence of Hawaiian heritage for the Department of Hawaiian Home Lands (DHHL) to secure a land lease for someone.

28. The Department of Hawaiian Home Lands is governed by the Hawaiian Homes Commission Act of 1920, enacted by the U.S. Congress to protect and improve the lives of native Hawaiians. The act created a Hawaiian Homes Commission to administer certain public lands, called Hawaiian home lands, for homesteads.

29. As stated in the Hawaiian Home Lands manual regarding applying for Hawaiian Home Lands on Page seven [7] of text (Page eleven [11] of the PDF file), attached as **EXHIBIT "B"**, in order to qualify for a Hawaiian Home Land Lease, you must be at least fifty percent [50%] native Hawaiian by blood, and not by marriage or adoption. In order for the DHHL to process an application, DHHL utilizes information that is found only on the original Certificate of Live Birth, which is either black or green. This is a more complete record of your birth than the Certification of Live Birth (a computer-generated printout).

30. Additionally, Dr. Fukino, Director of the Hawaiian Department of Health released a press release stating she saw Soetoro's "vault" version birth certificate in a file. Although, Dr. Fukino does not claim Soetoro was born in Hawaii (or the United States, for that matter), she does confirm that the "vault" version birth certificate exists, see **EXHIBIT "C"**. Once again, Soetoro refuses to release access to this "vault" version birth certificate which, if it were legitimate, would show doctors' signatures, city, state and country of birth, and of course would solve the issue of where he was in fact born.

31. It appears that Soetoro became an Indonesian citizen. When Soetoro was approximately four (4) years old his parents divorced and thereafter, Soetoro's mother, Stanley Ann Dunham, married Lolo Soetoro, a citizen of Indonesia. Evidence points to the fact that Lolo Soetoro either signed a government form legally "acknowledging" Soetoro as his son or "adopted" Soetoro, either of which changed any citizenship status Soetoro had to a "natural" citizen of Indonesia.

32. At the time that Defendant Barry Soetoro was in Indonesia, all Indonesian students were required to carry government identity cards or ***Karty Tanda Pendudaks***, as well as family card identification called a ***Kartu Keluarga***. The *Kartu Keluarga* is a family card which bears the legal names and citizenship status of all family members.

33. Soetoro was registered in a public school as an Indonesian citizen by the name of Barry Soetoro and his father was listed as Lolo Soetoro, M.A. Indonesia did not allow foreign students to attend their public schools in the late 1960's or 1970's, and any time a child was registered for a public school, the child's name and citizenship status were verified through the Indonesian Government. See Constitution of Republic of Indonesia (*Undang-Undang Dasar Republik Indonesia 1945*), Chapter 13, Law No. 62 of 1958 (all citizens of Indonesia have a right to education). The school record, attached hereto as **Exhibit "D"**, indicates that Soetoro's name is "Barry Soetoro;" his nationality is "Indonesia;" and his religion as "Islam". There was no way for Soetoro to have attended school in Jakarta, Indonesia legally unless he was an Indonesian citizen, as Indonesia was under tight rule andw as a Police State. See Constitution of Republic of Indonesia (*Undang-Undang Dasar Republik Indonesia 1945*), Law No. 62 of 1958. These facts indicate that Soetoro is an Indonesian citizen, and therefore he is not eligible to be President of the United States.

34. Under Indonesian law, when a male acknowledges a child as his son, it deems the son, in this case Soetoro, an Indonesian State citizen. Constitution of Republic of Indonesia, Law No. 62 of 1958 concerning Immigration Affairs and Indonesian Civil Code (Kitab Undang-undang Hukum Perdata) (KUHPer) (Burgerlijk Wetboek voor Indonesie).

35. Furthermore, under the Indonesian adoption law, once an Indonesian citizen adopts a child, the adoption severs the child's relationship to the birth parents, and the adopted child is given the same status as a natural child and the child takes the name of his step-father, in this case, Soetoro. See Indonesian Constitution, Article 2.

36. The Indonesian citizenship law was designed to prevent apatride (stateless) or bipatride (dual) citizenship. Indonesian regulations recognized neither apatride nor bipatride (stateless or dual) citizenship. Since Indonesia did not allow dual citizenship; neither did the United States (since the United States only permitted dual citizenship when 'both' countries agree); and since Soetoro was a "natural" citizen of Indonesia, the United States would not step in or interfere with the laws of Indonesia. Hague Convention of 1930.

37. As a result of Soetoro's Indonesian "natural" citizenship status, Soetoro could never regain U.S. "natural born" status, if he in fact he ever held such, which we doubt. Soetoro could have only become "naturalized" if the proper paperwork were filed with the U.S. State Department, after going through U.S. Immigration after his return to the United States; in which case, Soetoro would have received a Certification of Citizenship indicating "naturalized."

38. Plaintiff is informed, believes and thereon alleges Soetoro was never naturalized in the

United States after his return. Soetoro was ten (10) years old when he returned to Hawaii to live with his grandparents. Soetoro's mother did not return with him. Therefore, it appears that she did not apply for citizenship for Soetoro in the United States. If citizenship for Soetoro had been applied for in 1971, Soetoro would have a Certification of Citizenship. If Soetoro returned in 1971 to Hawaii without going through U.S. Immigration, today he would be an "illegal alien" – and obviously not able to serve as President, but also his term as a United States Senator from Illinois for nearly four (4) years was illegal. Plaintiff believes Soetoro might have reentered the United States at age ten (10) by showing a copy of his aforementioned Hawaiian Certification of Live Birth or his Indonesian Passport.

39. Moreover, Plaintiff has been unable to locate any legal documents wherein Soetoro's name was legally changed from Barry Soetoro to Barack Hussein Obama. Soetoro's silence on these issues is deafening and his refusal to release such records to prove that none of this occurred results in his status as Acting Commander in Chief at best, and a willful action on his part to deceive the Armed Forces of the United States so that he may wield power that is in non-compliance with the United States Constitution.

40. Plaintiff is literally caught between a rock and a hard place. If reactivated, he comes under a duty to uphold the Constitution of the United States and to obey lawful orders. He would come

under a duty, under at least certain circumstances, to disobey unlawful orders. He would come under a duty to support and defend the Constitution against all enemies, both foreign and domestic. But to whom will these duties be owed from January 20, 2009 on? And against whom will these duties operate? Soetoro or Biden?

41. This dilemma is particularly distressful to the Plaintiff in light of the current state of the law on obeying or disobeying unlawful orders. The Armed Forces themselves construe their oath to obey orders to require only that they obey lawful orders. See the *Uniform Code of Military Justice (UCMJ) 809.ART.90 (20)* (military personnel need only obey the "lawful command of his superior officer"); *891.ART.91 (2)*, (servicemember must obey the "lawful order of a warrant officer"; *892.ART.92 (1)* servicemember must obey the "lawful general order"), and *892.ART.92 (2)* ("lawful order"). And the courts have recognized even the affirmative duty of servicemembers to disobey unlawful orders, most notably in the notorious "My Lai Massacre" case, *UnitedStatesv.Calley*, 22 USCMA 534, 48 CMR 19 (1973).

42. In the instant case, the first question Plaintiff is concerned about is, "Does *United States v.New*, 55 M.J. 95 (2001), apply to a case in which the claim by the person declaring that he is President is a claim that is false? And does this vary according to whether the claim to be President is 'palpably illegal on its face?'" See

New, 55 M.J. at 108. *U.S. v. New* applies on its face to a soldier's duty to obey legal orders and disobey certain illegal orders, of course. But does it also apply with respect to the underlying question of whether the person giving the orders is even legitimately in office to give those orders in the first place?

43. Plaintiff faces the possibility of a conflict in his duties and multiple claims against him for the performance of these duties. It has been held that Interpleader may be brought even though no demand has yet been made on a Plaintiff for the property or obligation in question. *Dunbar v. United States*, 502 F.2d 506 (5th Cir. 1974). Instead, the mere fact that the Plaintiff has a real, reasonable, bona fide fear of exposure to multiple claims or the hazards and vexation of conflicting claims is sufficient. *American Fidelity Fire Insurance Co. v. Construcciones Werl, Inc.*, 407 F. Supp. 164 (D. Virgin Islands 1975). See also, *Underwriters at Lloyd's v. Nichols*, 363 F.2d 357 (8th Cir. 1966) (in such circumstances, court has a duty to allow Interpleader).

44. Plaintiff especially asks this Court to keep in mind that if Soetoro is sworn in, he could be blackmailed by anyone possessing *prima facie* evidence of his lack of natural-born citizenship. The blackmail could be for money, or could be for changing policy, whether foreign or domestic.

45. Plaintiff fears the hazards and vexations of multiple conflicting orders and r

responsibilities with respect to his aforementioned duties, all of which may interfere with, and may possibly sever, their relationships with all those above him in the chain of command, including, but not limited to, the Acting President or President, and all of which may interfere with, and may possibly sever, his employer/employee relationship with the Department of Defense.

These hazards and vexations can include court-martials, incarceration, reduction in rank, loss of benefits and privileges, a dishonorable discharge, and claims against him for damages, all of which might come, possibly in contradictory manner, from more than one source of authority, or at least from more than one claimed source of authority, above him. Each of these injuries, and all of them, would constitute irreparable harm to the Plaintiff. With respect to relief from each of these injuries, and all of them, damages will not suffice for Plaintiff, and there is no adequate remedy at law.

46. It is particularly important to the Plaintiff to know whether Soetoro is eligible to be President before Plaintiff is reactivated because if Soetoro issues an order to reactivate him, he will have to know whether that is an order he is required to obey, or perhaps (at least in certain cases) whether that is even an order he is required to disobey. The evidence that Soetoro is not a "natural-born" citizen is so substantial that as things stand right now, unless this Court affirmatively declares

that Soetoro is indeed constitutionally qualified to be President, Plaintiff will be of the opinion that he must refuse to recognize as being lawful the reactivation order and any other orders to him pursuant to the reactivation order.

47. If the ordinary processes of law would then be available to the Plaintiff for a resolution of these conflicts upon his reactivation, perhaps his distress today would not be quite as pronounced as it is. But the ordinary processes of law would not be available to the Plaintiff in the event that he is reactivated. As this Court itself has held (and as was affirmed by the D.C. Circuit), Congress has by statute precluded members of the Armed Forces from having access to the Article III Courts until and unless they have first disobeyed an order and have been court-martialed for having done so, and all their appeals in the military courts have been exhausted. *United States ex rel. New v. Perry*, 919 F. Supp. 491 (D.D.C. 1996); *aff'd sub nom. New v. Cohen*, 129 F.3d 639 (D.C. Cir. 1997), *cert. den.*, 523 U.S. 1048, 118 S.Ct. 1364, 140 L.Ed.2d 513.

48. Thus, the ordinary processes of the law in the Article III Courts are not available to the Plaintiff for a consideration of his plight once he is reactivated and deemed to be in active status. This, of course, adds to all the other grounds the Plaintiff has for having a real, reasonable, bona fide fear of exposure to multiple claims or the hazards and vexation of conflicting claims.

49. Plaintiff's concern over how to conduct

himself, and his concern over multiple conflicting civil and criminal claims against him if Soetoro is sworn in is further increased by a recent Supreme Court decision, *Nguyen v. United States*, 539 U.S. 69 (2003). In *Nguyen* the Supreme Court took note of the fact that the usual rule regarding the acts of *de facto* officers is that ordinarily they are equally valid as those of *de jure* officers. The Court held nonetheless that the judgment of the Ninth Circuit had to be vacated on the grounds that there was a constitutional defect in the authority of the Article IV Court Judge to hear the appeals. *Nguyen v. United States*, 539 U.S. 69, 77-81, 123 S.Ct. 2130, 2135-2137, 156 L.Ed.2d 64, 75-78 (2003). Thus it is the case that, by the Supreme Court's own jurisprudence, Plaintiff Hollister will not have reasonable notice ahead of time as to which orders of Barry Soetoro, if he is the *de facto* President and not the *de jure* President, will be orders which are valid, and which Plaintiff must obey, or which orders may not be valid, and which Plaintiff would be expected to disobey.

50. Plaintiff is in need of the assistance of this Court. Without a determination by competent authority as to whether Soetoro is or isn't constitutionally eligible to be President, the Plaintiff will be left on his own to determine his duties should he receive what is purported to be his reactivation orders from Soetoro, or conflicting orders from his superiors in the chain of command, or orders which may conflict with his

duty to support and defend the Constitution. In that respect, the Plaintiff retains an interest in the alleged properties at issue in this case. Accordingly, if this Court does find that Soetoro is indeed constitutionally qualified to hold the Office of President, Plaintiff will need for this Court to base such a finding upon a clear showing by affirmative evidence, consistent with Soetoro's burden of proof under Interpleader, that Soetoro is indeed a "natural born" United States citizen and qualified to be President in order to reduce any possibility that the deference to this Court might start to weaken among those above them in the chain of command with respect to this most crucial issue concerning the various duties of all members of the Armed Forces of the United States.

51. This Court has to act now. Judgment on the merits is the only thing that can prevent a horrible state of affairs for the Plaintiff and the members of our Armed Forces, the Courts and the nation. Plaintiff, members of the Armed Forces and the civilian populace have to know, and they have a right to know, who is lawfully entitled to be the Commander-in- Chief of the Armed Forces of the United States---who is lawfully entitled to "push the button", and who is not.

52. In that hour when---God forbid---it actually becomes necessary to decide, one way or the other, whether to use America's nuclear arsenal, will the senior members of our military be under a legal duty to obey the orders of the would-be Commander-in-Chief, or will they be

under a legal duty to disobey the order of an apparent enemy (foreign, or domestic) of the Constitution who holds the office of President? We ask the Court to bear in mind that, depending on what facts are ascertained at trial, the Court may conclude that Soetoro is in fact, right now, an illegal alien.

53. The bottom line, then, is this: As things stand now, without this Court's intervention, the Plaintiff in the instant case will be left completely out in the cold following Inauguration Day if he should happen to face a possible conflict between his duties to obey lawful orders on the one hand and his duties to disobey unlawful orders and defend the Constitution on the other hand, particularly if the unlawful order is "palpably illegal on its face" (*New*, 55 M.J. at 108), whatever his "interpretation of applicable law" (*Ibid.*) may be, especially if the would-be Commander-in-Chief's claim to hold office is palpably subject to disbelief simultaneously. And if this is the case with respect to this Plaintiff, what then will likewise be the case for the Joint Chiefs of Staff if Soetoro is in fact sworn in? Dare they speak up beforehand, if no national crisis is at hand? And will it be too late for them to speak up if in fact a national crisis does later on develop?

54. Plaintiff moves this Court for the Court's Orders to be issued nunc pro tunc in the event this Court declares Soetoro to be constitutionally ineligible to serve as President of the United tates, after Soetoro and Biden have been sworn in.

FIRST CAUSE OF ACTION (Against All Defendants)
Claim for Declaratory and Injunctive Relief
Interpleader 28 U.S.C. § 1335

55. Plaintiff hereby incorporates Paragraphs 1 through 54 as if fully set forth herein.

56. Plaintiff is in possession of certain property. This property consists of the rights pertaining to the duties owed by the Plaintiff to the Commander-in-Chief of the Armed Forces of the United States and to all others above him in his chain of command, and this property also consists of certain relationships. Said duties also constitute obligations owed by the Plaintiff to the Commander-In-Chief of the Armed Forces of the United States and to all others above him in his chain of command. The rights pertaining to each of these duties is worth Five Hundred [$500.00] Dollars or more. The rights pertaining to each of these relationships is worth Five Hundred [$500.00] Dollars or more. Plaintiff will deposit with this Court, if necessary, a Bond in the amount of Two Thousand Five Hundred [$2,500.00] Dollars for the combined sum of the properties that the Plaintiff possesses pertaining to the duties and relationships alleged in this Complaint.

57. Plaintiff is also in possession of Soetoro's Indonesian School Record showing his name as

Barry Soetoro and his citizenship status as Indonesian, and Plaintiff is in possession of his discharge document and has requested copies of his own enlistment papers. The document denominated as Soetoro's Indonesian School Record showing his name as Barry Soetoro and his citizenship status as Indonesian has a value of Five Hundred [$500.00] Dollars or more; Plaintiff's discharge document has a value of Five Hundred [$500.00] or more and has been deposited with this Court. Plaintiff has requested copies of his enlistment papers, which likewise have a value of Five Hundred [$500.00] Dollars or more, and copies of these documents will be deposited with this Court once they are received from the United States Department of Defense. Of course, Plaintiff's original enlistment papers are in the possession of the United States Department of Defense.

58. Plaintiff knows that each of the Defendants, and those acting under either of them, may have competing rights between themselves to the property rights in these duties, relationships, and documents, and the right to claim all the property rights with respect to all of these duties, relationships, and documents shall belong to either Soetoro or Biden as of Noon, Eastern Standard Time, on January 20, 2009, but Plaintiff does not know which of these two persons may properly claim the property rights in these duties, relationships, and documents.

59. Plaintiff has a real, reasonable, bona fide

fear of exposure to multiple claims or the hazards and vexation of conflicting claims brought by either or both of the Defendants, or by those acting under either of them.

60. Likewise, the document denominated as Soetoro's Indonesian School Record showing his name as Barry Soetoro and his citizenship status as Indonesian, which we have filed with this Court as **EXHIBIT "D"**, is a chattel of peculiar value not fungible with other chattels, and the Plaintiff has a real, reasonable, bona fide fear that he could be subject to injunctive relief over it and possible criminal prosecution by Soetoro, Biden or those acting under either of them for unlawfully withholding it.

61. Plaintiff's discharge documents, which are filed with this Court as **EXHIBIT "A"**, and his enlistment papers are also chattels of a peculiar value not fungible with other chattels, and the Plaintiff has a real, reasonable, bona fide fear that if he is expelled from the military by Soetoro or Biden or by those acting under either of them, the substance of the provisions of those papers would lose much of their meaning and value.

62. By virtue of these fears and concerns, which, if realized, would subject Plaintiff to irreparable harm as to which damages would not suffice, and as to which there is no adequate remedy at law, Plaintiff is entitled to use Interpleader under 28 U.S.C. § 1335 to join Soetoro and Biden as Defendants to cause them to come forward with the proof of Soetoro's constitutional

eligibility to serve as President of the United States pursuant to Article II, § 1, Cl. 5 of the U.S. Constitution and proof as to which of them may be entitled to the rights pertaining to the property which the Plaintiff alleges that he holds, so that Plaintiff might receive from this Court a declaration of the Plaintiff's rights and duties with respect to each Defendant, and Injunctive Relief as may be appropriate against either or both Defendants on behalf of the Plaintiff.

WHEREFORE, Plaintiff respectfully prays that this Court:

A. Declare Barry Soetoro a/k/a Barack Hussein Obama, in his capacity as a natural person is hereby constitutionally ineligible to be President of the United States pursuant to Article II, § 1, Cl. 5 of the Constitution of the United States and the same is hereby Ordered to refrain from assuming, or taking the oath of, said office or exercising the duties and functions thereof, and to refrain from interfering with, or claiming, the properties and/or the obligations of the Plaintiff alleged in this Complaint; or

B. Declare Barry Soetoro a/k/a Barack Hussein Obama, in his capacity as *de facto* President of the United States *in posse* is hereby constitutionally ineligible to be President of the United States pursuant to Article II, § 1, Cl. 5 of the Constitution of the United States and the same is hereby Ordered to refrain from assuming, or taking the

oath of, said office or exercising the duties and functions thereof, and to refrain from interfering with, or claiming, the properties and/or the obligations of the Plaintiff alleged in this Complaint; or

C. Declare, if this Court finds on the merits that Barry Soetoro a/k/a Barack Hussein Obama is not eligible to be President after Barry Soetoro a/k/a Barack Hussein Obama has been sworn in as President, that Barry Soetoro a/k/a Barack Hussein Obama is further barred and prohibited *nunc pro tunc* from holding the Office of President and from exercising the functions and duties of said Office, and from interfering with, or making any claim to, the properties and/or the obligations of the Plaintiff alleged in this Complaint; and

D. Order Plaintiff to refrain from recognizing Barry Soetoro a/k/a Barack Hussein Obama as President of the United States and Commander-in-Chief of the Armed Forces thereof; or

E. Declare Barry Soetoro a/k/a Barack Hussein Obama, in his capacity as a natural person is hereby eligible to be President of the United States, pursuant to Article II, § 1, Cl. 5 of the Constitution of the United States, and that he may rightfully claim the properties and/or the obligations of the Plaintiff alleged in this Complaint upon assuming the Office of President of the United States; or

F. Declare Barry Soetoro a/k/a Barack Hussein Obama, in his capacity as *de jure* President of the United States *in posse* is hereby

eligible, pursuant to Article II § 1, Cl. 5 of the Constitution of the United States, to be President of the United States, and that he may rightfully claim the properties and/or the obligations of the Plaintiff alleged in this Complaint upon assuming the Office of President of the United States; and

G. Order Plaintiff to recognize Barry Soetoro a/k/a Barack Hussein Obama as *de jure* President of the United States and Commander-in-Chief of the Armed Forces thereof from the time of his inauguration into that office and Joseph R. Biden as *de jure* Vice-President of the United States from the time of his inauguration into that office, for the term of each office beginning at Noon, Eastern Standard Time, January 20, 2009; or

H. Order Plaintiff to look to Joseph R. Biden for Orders if this Court finds Barry Soetoro a/k/a Barack Hussein Obama constitutionally ineligible pursuant to Article II, § 1, Cl. 5 of the U.S. Constitution; and

I. Retain Jurisdiction of this action to ensure the Court's Orders are being fully enforced; and

J. Award Plaintiff his Attorney Fees and Costs and Grant Plaintiff such other and further relief as this Honorable Court deems just and proper.

COUNT TWO
(Against All Defendants)
Claim for Declaratory and Injunctive Relief

BIVENS ACTION

63. Plaintiff hereby incorporates Paragraphs 1 through 62 as if fully set forth herein.

64. A Bivens Action is an action against Federal Employees for redress under the same criteria as 42 U.S.C § 1983 actions, which is inapplicable to Federal employees.

65. Article III of the Constitution requires the Federal Courts to review only "cases and controversies," which require Plaintiffs seeking to invoke a federal court's authority, other than in a claim based upon Interpleader or a *Bivens* claim, to show "(1) actual or threatened injury (2) suffered as a result of the allegedly illegal conduct of the Defendant, which (3) fairly can be traced to the challenged action and (4) is likely to be redressed by a favorable decision." *Salmon River Concerned Citizens v. Robertson*, 32 F.3d 1346, 1353 (9th Cir. 1994). Where a Plaintiff who is not proceeding in a case based upon interpleader or *Bivens* claim cannot satisfy these requirements, the Court lacks jurisdiction.

66. Because Plaintiff alleges a *Bivens* claim, on the grounds that he is challenging a possible administrative action, he need demonstrate only a realistic danger of sustaining an injury to his rights and need not await the consummation of the threatened injury in order to obtain preventive relief, such as exposing himself to actual arrest or prosecution as a result of conflicting opinions with

his Superior Officers in the Military as to whether an Order issued by Soetoro is a lawful Order or an Unlawful Order, and Plaintiffs refusal to abide by said Order. Plaintiff is stating an intention to engage in conduct arguably affected with a constitutional interest but proscribed by statute and there exists a credible threat of prosecution thereunder, Plaintiff may bring an action for declaratory or injunctive relief. *Steffelv. Thompson*, 415 U.S. 452 (1974); *Wooleyv. Maynard*, 430 U.S. 705, 707 -708, 710 (1977); *Babbitt v. United Farm Workers*, 442 U.S. 289, 297 -305 (1979) (finding some claims ripe, others not). Compare *Doe v. Bolton*, 410 U.S. 179, 188 -189 (1973), with *Roe v. Wade*, 410 U.S. 113, 127 -128 (1973). See also *PlannedParenthood v.Danforth*, 428 U.S.
52 (1976); *Colauttiv.Franklin*, 439 U.S. 379 (1979)

67. Similarly, the reasonable certainty of the occurrence of the perceived threat to a constitutional interest is sufficient to afford a basis for bringing a challenge, provided the court has sufficient facts before it to enable it to intelligently adjudicate the issues. *Buckleyv. Valeo*, 424 U.S. 1, 113 -118 (1976); *RegionalRail ReorganizationActCases*, 419 U.S. 102, 138 -148 (1974) (holding some but not all the claims ripe). See also *Goldwaterv.Carter*, 444 U.S. 996, 997 (Justice Powell concurring) (parties had not put themselves in opposition)

68. There are serious questions into the

eligibility of Soetoro to serve as President of the United States pursuant to the United States Constitution. It is believed Soetoro is not a "natural born" citizen and in fact may be an Indonesian Citizen, therefore making him ineligible and unqualified pursuant to the Constitution to legally serve as President of the United States. As a result of the questions of Soetoro's citizenship status and his constitutional eligibility to serve as President of the United States, any orders he issues and/or signs may be illegal Orders.

69. Soetoro was born in Mombosa, Kenya, and his mother was not old enough to confer U.S. "natural born" citizenship status to Soetoro, *United States of America v. Cervantes-Nava*, 281 F.3d 501 (2002), *Drozdv. I.N.S.*, 155 F.3d 81, 85-88 (2d Cir. 1998).

70. Additionally, Soetoro lost any "naturalized" United States citizenship status he might ever have had when he became a "natural" citizen of Indonesia. Soetoro's mother married Lolo Soetoro an Indonesian Citizen in or about 1964/1965. Lolo Soetoro acknowledged Soetoro as his son and/or adopted Soetoro thus changing his citizenship status to a "natural" citizen of Indonesia. Under Indonesian law, when a male acknowledges a child as his son, it deems the son, in this case Soetoro, as an Indonesian State citizen. Constitution of Republic of Indonesia, Law No. 62 of 1958, Law No. 12 concerning Citizenship of Republic of Indonesia, Law No. 9 concerning

Immigration Affairs and Indonesian Civil Code (Kitab Undang-undang Hukum Perdata) (KUHPer) (Burgerlijk Wetboek voor Indonesie). Republic of Indonesia Constitution 1945, Chapter X, Citizens and Residents, Article 26 states *"(1) Citizens shall consist of indigenous Indonesian peoples and persons of foreign origin who have been legalized as citizens in accordance with law. (2) Residents shall consist of Indonesian citizens and foreign nationals living in Indonesia."* Soetoro was a "natural" citizen of Indonesia and not a foreign national, as proven by his Indonesian school registration

71. Moreover, Plaintiff is unaware of Soetoro's legal name. Is it Barry Soetoro or Barack H. Obama? Soetoro's last legal name shows his name as Barry Soetoro and his citizenship status is Indonesian according to his school record, See **EXHIBIT "D"**.

72. Plaintiff is retired Military, and although he is retired he still took the Oath of Enlistment to uphold the U.S. Constitution against enemies both foreign and domestic, and adhere to any Orders issued by the President of the United States. Plaintiff is in the Individual Ready Reserve and is subject to recall into the Military upon Presidential Order and is required to uphold his Oath of enlistment. Presidential recall can happen at any time.

73. Due to the questions into Soetoro's citizenship status and his eligibility and/or

ineligibility pursuant to Article II, § I, Cl. 5 of the United States Constitution, Plaintiff is seeking a Declaratory Judgment from this Court either declaring Soetoro is in fact a "natural born" U.S. citizen and eligible to serve as President of the United States; or declaring that Soetoro is not a "natural born" citizen and is ineligible to serve as President of the United States.

74. Plaintiff can be recalled into the Military at any time, and as things stand now, because the evidence that Soetoro is not qualified to be President is so substantial, Plaintiff will consider himself obligated by law to refrain from honoring or abiding by any Order of Soetoro until it is determined that Soetoro is in fact a "natural born" citizen and constitutionally eligible to serve as President of the United States.

75. As things stand now, because the evidence that Soetoro is not qualified to be President is so substantial, Plaintiff will consider Soetoro to be an enemy of the Constitution Thus, Plaintiff will refuse to abide by any order issued by Soetoro until the issues of citizenship status and constitutional eligibility to serve as President of the United States pursuant to the U.S. Constitution are resolved.

76. Soetoro and Biden and the United States government face the danger that they may be deprived of the performance of the duties and fulfillment of the obligations alleged in this Complaint which Plaintiff will owe to the

Commander-In-Chief, and that they may be deprived of the continuation of the relationships with the Plaintiff alleged this Complaint, if Soetoro issues Orders recalling Plaintiff and Plaintiff refuses to adhere to Soetoro's Orders, and it is later determined that Soetoro is in fact a "natural born" citizen and that all his Orders were in fact legal Orders. Soetoro, Biden and the U.S. Government will then additionally be deprived of the costs involved in replacing Plaintiff in the Military recall, the cost of criminally prosecuting Plaintiff for his failure to adhere to Soetoro's Orders and the cost of all civil litigation brought against Plaintiff for recovery of the damages.

77. Since Plaintiff ~~is~~ will be in the military if he is recalled to active service, he ~~is~~ will be considered a Federal employee if he is so reactivated. If the citizenship status of Soetoro and Soetoro's constitutional eligibility to serve as President of the United States are not decided immediately, as things stand now, Plaintiff will refuse to abide by Soetoro's Orders, and will be doing so under the color of law in his official capacity as an Officers of the Military, which could subject him to Court marshaling if his superior Officers do not agree.

78. Until the issues regarding Soetoro's citizenship status and constitutional eligibility to serve as President of the United States pursuant to the U.S. Constitution are resolved, Defendant will be deprived of his fundamental

rights secured by the Fourteenth Amendment of the United States Constitution pertaining to due process and equal protections of the laws.

79. For this reason, it is extremely important for the Court to issue Plaintiff Declaratory relief to resolve the critical issue of Soetoro's citizenship status and eligibility to serve as President of the United States. It is further extremely important for this Court issue Injunctive relief against Soetoro, if the Court determines Soetoro to be ineligible to serve as President of the United States, to prohibit Soetoro from issuing any Order recalling Plaintiffs.

WHEREFORE, Plaintiff respectfully prays that this Court:

A. Declare Barry Soetoro a/k/a Barack Hussein Obama, in his capacity as a natural person is hereby <u>constitutionally ineligible</u> to be President of the United States pursuant to Article II, § 1, Cl. 5 of the Constitution of the United States and the same is hereby Ordered to refrain from assuming, or taking the oath of, said office or exercising the duties and functions thereof, and to refrain from interfering with, or claiming, the properties and/or the obligations of the Plaintiff alleged in this Complaint; or

B. Declare Barry Soetoro a/k/a Barack Hussein Obama, in his capacity as *de facto* President of the United States *in posse* is hereby <u>constitutionally</u>

ineligible to be President of the United States pursuant to Article II, § 1, Cl. 5 of the Constitution of the United States and the same is hereby Ordered to refrain from assuming, or taking the oath of, said office or exercising the duties and functions thereof, and to refrain from interfering with, or claiming, the properties and/or the obligations of the Plaintiff alleged in this Complaint; or

C. Declare, if this Court finds on the merits that Barry Soetoro a/k/a Barack Hussein Obama is not eligible to be President after Barry Soetoro a/k/a Barack Hussein Obama has been sworn in as President, that Barry Soetoro a/k/a Barack Hussein Obama is further barred and prohibited *nunc pro tunc* from holding the Office of President and from exercising the functions and duties of said Office, and from interfering with, or making any claim to, the properties of the Plaintiff and/or the obligations alleged in this Complaint; and

D. Order Plaintiff to refrain from recognizing Barry Soetoro a/k/a Barack Hussein Obama as President of the United States and Commander-in-Chief of the Armed Forces thereof; or

E. Declare Barry Soetoro a/k/a Barack Hussein Obama, in his capacity as a natural person is hereby eligible to be President of the United States, pursuant to Article II, § 1, Cl. 5 of the Constitution of the United States, and that he may rightfully claim the properties and/or the obligations of the Plaintiff alleged in this Complaint upon assuming

the Office of President of the United States; or

F. Declare Barry Soetoro a/k/a Barack Hussein Obama, in his capacity as *de jure* President of the United States *in posse* is hereby eligible, pursuant to Article II § 1, Cl. 5 of the Constitution of the United States, to be President of the United States, and that he may rightfully claim the properties and/or the obligations of the Plaintiff alleged in this Complaint upon assuming the Office of President of the United States; and

G. Order Plaintiff to recognize Barry Soetoro a/k/a Barack Hussein Obama as *de jure* President of the United States and Commander-in-Chief of the Armed Forces thereof from the time of his inauguration into that office and Joseph R. Biden as *de jure* Vice-President of the United States from the time of his inauguration into that office, for the term of each office beginning at Noon, Eastern Standard Time, January 20, 2009; or

H. Order Plaintiff to look to Joseph R. Biden for Orders if this Court finds Barry Soetoro a/k/a Barack Hussein Obama constitutionally ineligible pursuant to Article II, § 1, Cl. 5 of the U.S. Constitution; and

I. Retain Jurisdiction of this action to ensure the Court's Orders are being fully enforced; and

J. Award Plaintiff his Attorney Fees and Costs and Grant Plaintiff such other and further relief as this Honorable Court deems just and proper.

Respectfully submitted,

_____

Dated: February 9 2009

/s/ Philip J. Berg

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Supreme Court, U.S.
FILED

NOV 22 2010

OFFICE OF THE CLERK

Docket No. 10-678

In The
SUPREME COURT OF THE UNITED STATES

GREGORY S. HOLLISTER, et al.,

Petitioners

v.

BARRY SOETORO, et al.,

Respondents.

On Petition for Writ of Certiorari
To the United States Court of Appeals
For the District of Columbia Circuit

APPENDIX
Volume III

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May 24, 2010

Honorable Mark J. Langer, Clerk
United States Court of Appeals
for the District of Columbia Circuit
333 Constitution Avenue, NW
Washington, D.C. 20001

Re: *Hollister v. Soetoro*, No. 09-5080,
consolidating No. 09-5161

Dear Sir:

I write pursuant to Rule 28(j) to bring to the attention of the Court supplemental authority which has come to our attention since we filed our briefs in the case, now under reconsideration. This authority is about the issue of the phrase "natural born citizen" in Art. II, Sec. 1, Cl. 5 of the Constitution, which is central to our contention that if the allegations of the complaint be taken as true a case was made and the said central issue should have been treated, but wasn't. In prior filings we cited the 19th century case authority pointing to the work of Vattel on the Law of Nations as the origin of the thinking behind that phrase. (pp.5, 35-6)

Now we cite Vattel in his "Le Droit des Gens ou Principes de la Loi Naturelle 1758 (English 1759) from Vol. 1 (of 2) Chpt. XIX, 212, Des citoyens et naturels: "Les naturels, ou indigenes, sont ceux qui sont nes dans le pays, de parens citoyens." Unmistakably he says that those are natural born citizens who are born in the country of citizen parents.

David Ramsay, founding father from South Carolina who served in the Continental Congress in 1782-83 and 1785-86, wrote early histories of the founding. In his 1789 essay "A Dissertation on the Manners of Acquiring the Character and Privileges of a Citizen" pp. 6-7 describes the "natural born citizen" as one born in the country of citizen parents. He knew
all the participants and worked with them in his role as a member of the Congress.

St. George Tucker emigrated from Bermuda before the Revolution, in which he fought extensively.
He married the widowed mother of John Randolph of Roanoke, by whom he had two children. He taught law for years at William and Mary. In 1804 he published the leading American version of Blackstone of the time, in which he correlated Blackstone with the Constitution. In the Appendix

to Vol. 1, Note D, Sec. 14 he makes clear that the Framers relied upon Vattel's definition above, not the common law concept concerning "subjects." He gives examples why.

Sincerely yours,
/s/ John D. Hemenway
Counsel for Appellants D.C. Bar No. 379663

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have caused the foregoing to be served electronically upon counsel of record this 24th day of May, 2010.

/s/ John D. Hemenway

CERTIFICATION OF WORD COUNT

I HEREBY CERTIFY that the foregoing in its body consists of 350 words.

/s/ John D. Hemenway

No 09-5080
Consolidating No. 09-5161

Case Below 08-2254 JR

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

GREGORY S. HOLLISTER, et al.,
Appellants,
v.

Barry Soetoro, in his capacity as a natural person; de facto President in posse; and as de jure President in posse , also known as Barack Obama, et al.
Appellees.

MOTION FOR RECUSAL PURSUANT TO 28 U.S.C. § 455

The plaintiffs/appellants jointly move for recusal of the judge below pursuant to and the vacation of his opinions as a consequence of the recognition of his bias and appearance of bias under that statute. They also request of the members of this Court, particularly those who have embraced the bias of the court below, that they consider their obligation to recuse themselves if they present even an appearance of bias under that statute. Details are given below.

SUPPORT FOR THE MOTION

I. THE STATUTE TODAY

The Supreme Court has pointed out that the 1974 revisions to 28 U.S.C. § 455 were "massive." *Liteky v. United States*, 510 U.S. 540, 546, 114 S.Ct. 1147, 1153, 127 L.Ed.2d 474 (1994). Two things in particu-lar that were adopted in the 1974 changes to this statute are significant in the present case. One such change was the fact that the new "catchall" provision of the new section (a) in the statute as modified requires all possibilities of interest and relationship to be evaluated "on an objective basis" so that "what matters is not the reality of bias or prejudice but its appearance." *Id.*, 510 U.S. at 548. The second very important change for present purposes was that the modify-cations placed upon the judge himself the obligation to identify the existence of the grounds for recusal rather than requiring a party to file an affidavit and seek the recusal. *Id.*

Thus, in the present case Judge Robertson was required to himself identify his evident bias which he exhibited freely in the record and the members of this court who wish to or already have adopted that bias are similarly required to recuse themselves. The discussion by Justice Scalia in his

opinion in *Liteky*, of course, was largely about the question of whether or not expressions of bias must have an "extrajudicial" source, and under what circumstances bias may exist even without an extrajudicial source, referring back to the opinion by Mr. Justice Douglas in *United States v. Grinnell Corp.*, 384 U.S. 563, 583, 86 S.Ct. 1698, 1710, 16 L.Ed.2d 778 (1966) where he set out the "extrajudicial source" doctrine at some length on the one occasion prior to *Liteky* when the Supreme Court focused on the question. *Id.*, 510 U.S. at 544, 114 S.Ct. at 1152. The *Liteky* opinion also pointed to the Supreme Court's earlier exposition of the extrajudicial source doctrine in *Berger v. United States*, 255 U.S. 22, 31, 41 S.Ct. 230, 232, 65 L.Ed. 481 (1921). *Id.*, 510 U.S. at 545 fn. 1, 114 S.Ct. at 1152 fn. 1. The *Liteky* opinion notes, however, citing a number of cases from the federal appeals courts, that the extrajudicial source doctrine has never been absolute. The bottom line is that the extrajudicial source doctrine does apply under 28 U.S.C. § 455 but is subject to limits in that a judge cannot engage in bias and prejudice just because it does not stem from an extrajudicial source.

II. THE BIAS IS EVIDENT

The limitations upon the extrajudicial source doctrine are of little significance in the present case, however, because the outrageous bias exhibited in the court below is so overtly derived

from extrajudicial sources and, snidely, from the events that occurred in the case itself. This begins at the very outset of the first opinion of the judge below, that of March 5, 2009 (App. 208). He begins the opinion by making it clear that he thinks that the case is absolutely worthless and that he has a clear bias against it. From that point on the reasons that he gives for that opening bias give a clear appearance of bias that history will record, given the very blogosphere outside the record of the proceeding that he then extrajudicially relies upon.

His second paragraph begins with a needlessly snide and less than honest, aspersion cast upon the appellant and plaintiff Hollister. Attached to the Hollister complaint was a copy of Colonel Hollister's discharge papers showing his honorable discharge from the Air Force after a full career on active duty. Yet rather than acknowledge this fact as thus clearly shown, the lower court feels it has to say that "The plaintiff says that he is a retired Air Force colonel who continues to owe fealty to his Commander-in-Chief..." emphasis added) Clearly the plaintiff Hollister is a retired Air Force Colonel. He does not just say that he is. This gratuitous aspersion and insult starts the internal evidence of bias and certainly an appearance of bias at the very outset. The lower court judge then

further continues this needless and insulting bias by the parenthetical phrase: "(because he might possibly be recalled to duty.)" Surely a judge who himself went through college on an ROTC scholarship and did his time in the Navy is charged with knowing that the Individual Ready Reserve is an important element of our reserve forces, particularly for those with specialized skills like Colonel Hollister.

The facts of the Hollister complaint, if taken as true as is required when dismissing under Rule 12 (b)(6), amply allege that the defendant/appellee Soetoro a/k/a Obama is not a natural born citizen as that term is set out in Art. II, Sec. 1, Cl. 5 of the Constitution. Despite that, the lower court judge states, again snidely, that the situation is that the appellee/defendant Soetoro has not proved his eligibility to Colonel Hollister's "satisfaction." We call the Court's attention to our recently filed Rule 28(j) letter. The fact is that by the appellee/defendant's own public statements he is not qualified under the Constitution, and he knows it.

Next, at App. 208-209 the lower court judge then engages in what has become and will remain his most infamous indulgence in bias and the appearance of bias from an extrajudicial source. We refer to his statement, which has traveled far and wide and repeatedly on the Internet, that "the issue

of the President's citizenship was raised, vetted, blogged, texted, twittered, and otherwise massaged by America's vigilant citizenry during Mr. Obama's two-year campaign for the presidency, but this plaintiff wants it resolved by a court."

To paraphrase economist Dr. Walter E. Williams: It would not matter if a majority of the citizens wanted the Constitution ignored and violated, it would still be wrong and against the Rule of Law in this country to allow it to be violated. It would be difficult to find a more egregious example of bias with an extrajudicial source than this statement. However, the lower court then went on to make it even clearer that there was as well an extrajudicial source for its bias. It went on to say:

> The real plaintiff is probably Philip J. Berg, a lawyer who lives in Lafayette Hill, Pennsylvania, and who has pursued his crusade elsewhere, see Berg v. Obama, 574 F.Supp. 2d 509 (E.D.Pa. 2008), invoking the civil rights statutes, the Federal Election Campaign Act, the Freedom of Information Act, the Immigration and Nationality Act, the law of promissory estoppel. That case was a subject of a scholarly opinion by a judge who took Mr. Berg's claims seriously – and dismissed them. Mr. Hollister is apparently Mr. Berg's fallback brainstorm, essentially a straw plaintiff, one who could tee Mr. Berg's native-born issue up for decision on a new theory.

It is quite evident that another case in which Mr. Berg was a *pro se* plaintiff and which involved causes of action none of which are present in this case is an extrajudicial source of bias. Mr. Berg was never admitted even *pro hac vice* in the present case; to exhibit such bias against Colonel Hollister because of that case is quite flagrant bias with an extrajudicial source.

Moreover, at this point too in the opinion of March 5, 2009, (App. 209) we see the further evidence of bias in a gratuitous and snide insult directed to Colonel Hollister. Colonel Hollister is said by the lower court to be but a "straw man," a stooge as it were. Yet the lower court knew nothing about Colonel Hollister, it merely assumed this characterization out of its bias. This was particularly galling to Colonel Hollister and a particularly unjustified bias because, under the presidency of William Clinton, while an active duty officer in the Air Force, he had in fact raised an issue about the constitutional legitimacy of the orders given by President Clinton.

That inquiry was addressed to the fact that President Clinton, after having sworn to preserve and protect the Constitution as an ROTC cadet and Senate staffer had, while in Oxford, England, on the Rhodes Scholarship which he never completed, gone to Eastern Europe and participated in

communist demonstrations against the Vietnam War while we were at war with communism there. Colonel Hollister had raised the issue to a number of government officials of whether this was giving aid and comfort to the enemy in violation of the 14th Amendment. In order to make this historical record clear we attach as Attachment 1 to this memorandum a copy of the letter that Colonel Hollister at that time wrote to then Secretary of Defense Perry on that matter. We attach as Attachment 2 a copy of the similar letter that Colonel Hollister then wrote to Congressman Amory Houghton, who, at that time, was the Congressman from upstate New York where he grew up and went to school. This historical record makes it clear that Colonel Hollister has for many years taken more seriously his oath, as an officer, to protect and preserve the Constitution than Judge Robertson did in the lower court in this instance.

Then, in completing his opinion of March 5, 2009, the lower court judge further exhibited the bias that was so evident by seeking to assess Rule 11 sanctions in violation of the Rule in a manner that ignored the Rule's entire focus. He sought to assess the undersigned with the entire cost, including counsel fees, of the appellee/defendant Soetoro's defense in this litigation. He did this despite the fact that when a court, as opposed to a party, initiates a sanction such assessment is not

authorized by the Rule. And he made no inquiry whatsoever into what pre-filing inquiry had been made before suit was filed. Under Rule 11, if followed properly, the entire focus is on pre-filing inquiry. By not making any such inquiry, the lower court exhibited unsupported bias.

The undersigned then submitted a Show of Cause and a supplement to that Show of Cause. As a result the court below issued a second opinion on March 24, 2009. App. 243 ff. Before discussing that opinion, however, we want to point out a feature of the first opinion which is pertinent. At App. 210 the lower court found that it had jurisdiction of the case because of the interpleader statute but then stated that it was dismissing the case for failure to state a claim which is a dismissal pursuant to Fed.R.Civ. Proc. 12(b)(6).

The Supreme Court has made it clear repeatedly that when a Rule 12(b)(6) failure to state a claim is at issue all of the factual allegations in the complaint must be taken as true. See, *e.g.*, *Leatherman v. Tarrant County Narcotics Intelligence and Coordination Unit*, 507 U.S. 163, 164, 113 S.Ct. 1160, 122 L.Ed.2d 517 (1993). This is the first principle of Rule 12(b)(6). Equally important here is second principle that the Supreme Court has set out: "courts must consider the complaint in its entirety, as well as other sources ordinarily examine when ruling on Rule 12(b)(6) motions to dismiss,..." *Tellabs, Inc. v.*

Major Issues & Rights, Ltd., 551 U.S. 308, 322,127 S.Ct. 2499, 2509, 168 L.Ed.2d 179 (2007). In *Tellabs* the focus was on a particular phrase in a statute and the Supreme Court emphasized the need to investigate and explore the facts surrounding the phrase and the inferences that needed to be drawn. In this case the issue is a particular phrase in the Constitution and yet the court below, in its second opinion, completely abjured any examination of the phrase and continued to evidence bias.

At App. 256 the lower court, in its second opinion, said it had not said anything and would not say anything about the actual constitutional phrase. What it then said was quite illogical: "I have no business addressing the merits, because, having found that Mr. Hemenway's interpleader suit failed to state a claim upon which relief could be granted, and I have dismissed it." There is no way to analyze whether a sufficient claim has been made without considering the merits of the claim. The contention to the contrary is an absurdity and illustrates that the lower court was not operating on a study of the facts at issue and an analysis of the law as applied to those facts. By the time of its second opinion it seems to have been operating solely on its evident political bias.

Further evidence of this bias in the second opinion of the court below is found at App. 254 where it

says: "Many people, perhaps as many as a couple of dozen, feel deeply about this issue." Again, we would point out that the importance of a constitutional violation is not a function of popular sentiment. Further, this assertion is factually inaccurate. Major surveys have been conducted for the political left and right by reputable analyst firms and they indicate that the number concerned about this issue has been steadily growing and that something like half of the population feels that there is something suspicious about the appellee/defendant Soetoro's hiding of the documents of his birth and education and every other aspect of his life.

The lower court then continues at that same page to indicate its bias again arising from the extrajudicial source of the earlier *pro se* case brought by Philip J. Berg as well as other cases brought around the country. It is notable that it makes no proper analysis of possible preclusion and could not. It is strictly an exercise in bias.

After announcing that it would not consider the merits of this case because it had dismissed the case because the allegations of the complaint did not make out a case on the merits, the lower court, in its second opinion, then focused further on the Rule 11 question that it had introduced when it issued the Show of Cause to the undersigned. At App. 263 n. 3 the lower court had to acknowledge

that the clear language of Rule 11 gave it no authority to assess the hundreds of thousands in legal fees of the defendants Soetoro and Biden that it had sought to impose upon the undersigned. It then balanced this, however, with a further bit of bias from an extrajudicial source when, App. 264 n. 4, it linked to the web site of Philip J. Berg where it noted he had the temerity to seek to raise money in $15 amounts to seek to explore the constitutional eligibility issue of the defendant Soetoro, which he is spending hundreds of thousands to keep from succeeding.

Although the lower court had to acknowledge that it had sought to exercise authority that Rule 11 does not give it, it still failed to analyze the performance of the undersigned under actual Rule 11 law in that it did not direct a single bit of inquiry or analysis to any actual pre-filing inquiry. Instead the lower court, as we have pointed out, persisted in ignoring the word "obligation" in the alternative branch of the interpleader statute and kept focusing on the "property" branch of the statute. This, of course, does not comport with the obligation continually announced by the Supreme Court in *Conley v. Gibson*, 355 U.S. 41, 45-6, 78 S.Ct. 99, 102, 2 L.Ed.2d 80 (1957) and all its progeny and successors that:

> In appraising the sufficiency of the complaint we follow, of course, the accepted rule that a complaint should not be dismissed for

> failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.

Here the plaintiff Hollister alleged and can prove that he has, as a member of the Individual Ready Reserve, in the clear language of the interpleader statute, an "obligation" and duty to whoever is legitimately the Commander- in-Chief and, since the allegations of his complaint clearly allege that the defendant Soetoro has a problem in that regard, it is possibly the interpleader defendant Biden.In this circuit see *Kingman Park Civic Association v. Williams*, 348 F.3d 1033, 1040, 358 U.S.App.D.C. 295, 302 (D.C.Cir.2003), *Wagener v. SBC Pension Benefit Plan—Non Bargained Program*, 407 F.3d 395, 401 (D.C.Cir.2005).

The fundamental point that the lower court ignored is that if Colonel Hollister shows that he had an "obligation" as he did allege and as the interpleader statute refers to in the alternative, then he can show what he alleges and it does not matter that he cited cases about the issue of "property" as addressed in a different branch of the statute.

III. AN INVALID COMPARISON

During the presidency of Ronald Reagan, it will be recalled, the Libyan dictator Muammar Qadafy orchestrated a terrorist assault upon U. S. Service Members in Germany and as a result, with the cooperation of Prime Minister Thatcher of Great Britain, President Reagan launched, on April 14, 1986, an air attack upon Qadafy in his homeland with raids in the vicinity of Tripoli or Benghazi. Qadafy himself, it will be recalled, was not killed or injured, but others were by the bombs that were dropped in the air raid. This occurred when the plaintiff Hollister was on active duty in the Air Force. The raids employed U. S. Air Force planes operating from bases in the U. K. and Navy planes operating from the 6th Fleet in the Mediterranean. The President acted pursuant to Article 51 of the United Nations Charter, to protect U. S. lives and property against acts of terrorism that had been determined by the U. S. government to have been instigated by the Libyan government.

55 residents of Libya, who alleged that they had decedents killed in the raids, that they had suffered personal injuries in them or that they had had property damaged or destroyed in the attacks, retained former Attorney General Ramsey Clark and filed suit in the United States District Court for the District of Columbia. *Saltany v. Reagan*, 702 F.Supp. 319 (D.D.C.1988). The suit named as defendants President Reagan, various U. S. military and civilian officials that were involved in

their official capacity, Prime Minister Thatcher and the U. S. and the U. K. themselves.

It soon becomes evident when one looks into the *Saltany* case as filed that the theories under which it was pled would face insuperable obstacles in the existing law that would be evident from a bare minimum of pre-filing inquiry. In examining the facts of the case it was a matter of public record that President Reagan was acting pursuant to the U. N. Charter as approved by our Congress to launch a combat mission. Further he was, in launching that mission, utilizing a long standing alliance between ourselves and the UK.

To begin with, suing a foreign head of state at the time was specifically forbidden by a section of the United States Code, 28 U.S.C. § 517 unless one of certain exceptions which were clearly not applicable applied. Simply examining the U. S. Code before filing would have revealed that suing Prime Minister Thatcher was barred. In such cases, as had been done with regard to Prime Minister Thatcher at that time, the Department of State had made the determination and certification required by the statute to allow such an immunity. When such a determination had been made as was done in that instance, the Supreme Court had ruled that the courts were required to accept that as conclusive. *Ex Parte Republic of Peru,* 318 U.S.

578, 589, 63 S.Ct. 793, 800, 87 L.Ed. 1014 (1943), *Republic of Mexico v. Hoffman*, 324 U.S. 30, 35, 65 S.Ct. 530, 533-34, 89 L.Ed. 729 (1945).

Secondly suing a foreign government at the time was barred by what is known as the "act of state doctrine," particularly where an ally was taking an action requested by us. That doctrine had been established in Supreme Court cases such as *Underhill v. Hernandez*, 168 U.S. 250, 252, 18 S.Ct. 83, 84, 42 L.Ed.456 (1897) and *Banco Nacional de Cuba v. Sabbatina*, 376 U.S. 398, 84 S.Ct. 923, 11 L.Ed.2d 804 (1964). Ramsey Clark, who, notably, after serving as Attorney General, has been increasingly devoted to attacking our military efforts in defense of freedom, chose to allege that the U.K. had participated in an illicit act of war in concert with our own country. As the court noted a legitimate request to an ally pursuant to the U. N. charter having been invoked would be impossible to characterize as anything other than a legitimate act of state by the U.K. It was this failure to heed what even a modicum of pre-filing research would have revealed was a complaint not warranted in law and grounded in the facts that ultimately resulted in a substantial monetary sanction under Rule 11 in the case. The U.K., the original opinion in *Saltany* also noted, was claiming sovereign immunity, which is governed by the Foreign Sovereign Immunity Act, 28 U.S.C.§ 1330, 1602-

1611, which was also a viable defense for the U.K. under Supreme Court precedent. *Verlinden B.V. v. Central Bank of Nigeria*, 461 U.S. 480, 103 S.Ct. 1962, 76 L.Ed.2d 81 (1983).

The other counts which Ramsey Clark included in his complaint were ones that were barred on the whole by the clear language of the statutes under which they were brought in light of the fact of the U. N. charter provision having been invoked by President Reagan. A claim against U.S. military and civilian officials under the Federal Tort Claims Act, for example, was barred because that act expressly preserves the sovereign immunity of the U.S. for acts involving its officials when their acts are discretionary, arise from combatant activities or occur in a foreign country. A count under the Foreign Claims Act ran afoul of the language of that act in that it allows claims against the U. S. government for injuries caused abroad by its armed forces other than in combat. The Alien Tort Claims act is not a waiver of sovereign immunity of the U.S. A RICO count was not well founded in that an exercise of Commander-in-Chief responsibility such as was involved can not in any way said to be a pattern of racketeering activity.

We have discussed the *Saltany* case at some length because the lower court in this case, in its opinion of March 24, 2009, bottomed its ultimate decision to impose a Rule 11 reprimand upon the undersigned upon a comparison to that case. It

held that the undersigned, like Ramsey Clark in that case, should have known that this law suit had absolutely no chance of success. App. 261-264 A reading of this comparison, however, reveals that the court below did not point to any actual statutory language or any doctrine comparable to the act of state doctrine in this case that would impose the barriers that Ramsey Clark should have discovered before filing the *Saltany* complaint.

The only statute at issue here is the federal interpleader statute 28 U.S.C. § 1355. As we have now pointed out several times, the last of the items listed in the disjunctive in § 1355(a) applies here, where it speaks of "or being under any obligation written or unwritten to the amount of $500 or more,..." Certainly, under the rule that courts go by the clear language of a statute, the obligation, as a member of the Individual Ready Reserve, to report if called to do so by order of a Commander-in-Chief who is legitimately in that office fits within the clear language of the statute. As we have pointed out, the use of the language of obligation and duty in the complaint clearly creates a situation where there is a way to interpret the complaint so as to allow the complaint to go forward rather than dismissing it. There is no question but that a Colonel's salary is worth more than $500.

Thus, instead of making it clear that the case had no chance as in *Saltany*, the opposite is true here.

The language of the statute makes clear that there is a case. Further, this is made even clearer by the applicable language in 28 U.S.C. § 1355 (b) that there need be "two or more adverse claimants...[who] may claim to be entitled...one or more of the benefits...arising by virtue of any such obligation..." Congress' use of the word "may" in this part of the statute indicates that the lower court judge was in error when he based his dismissal in part upon the fact that it was not certain that Colonel Hollister would be called up. The long history of interpleader makes clear that it applies in such situations where the demand that creates the conflict is not certain to occur or is not known to occur at a certain date. Once again the language indicates that there is a case not that there is not one as in *Saltany*.

The point is that if the lower court here had actually analyzed the *Saltany* case rather than just making an unsupported blanket accusation of similarity it would not have been able to justify its comparison. Thus the invalid comparison seems to be an outgrowth of the bias that we have elucidated, not of reasoned and researched analysis. Certainly there is no "doctrine of preserving constitutional fraud" that is comparable to the act of state doctrine.

It is evident that from the outset to the end of his second opinion the lower court judge was operating

with a strong bias, much of it derived from extrajudicial sources. We have previously mentioned that the late Norbert Wiener, in his seminal work "Cybernetics" in the 1950's said presciently that what most people did not realize was that the information revolution that was then coming and which is now upon us would mean not just the decentralization of information but the decentralization of decision making itself. We now see that with the rise of the blogosphere and the springing up of countless independent websites not part of the centralized command media that arose in the initial days of nationalized broadcasting in the 1930's and 1940's and 1950's. We see today meetings in which ordinary citizens now more about what is in the details of a bill than their Member of Congress or Senator does. The dissemination is instantaneous and the rise in independent decision-making about officeholders and their doings is overwhelming. One result is a never before seen, at least since the founding days themselves, interest in the Constitution and adherence to it as a basic principle of our Rule of Law.

This inevitably has an effect upon the insistence upon an objective appearance of an absence of bias which 28 U.S.C. 455 in its present form commands. In this case the court below has become widely known in the country and will go

down in history as the "blogging and twittering" judge, one for whom a sort of affirmative action progressivism is more important than protecting and preserving the Constitution sufficiently to actually analyze the issues it presents. However, in the present structure of communications, Orwellian "memory holes" become very difficult to operate despite earnest efforts.

The defendant Soetoro has in a never before seen maneuver, used a State of the Union address to try and openly intimidate the Supreme Court into not carefully adhering to the Constitution, like a Cook County politico with the courts there. He has announced at a prayer breakfast that it is not "allowed" to know about his birth documentation. Mr. Justice Thomas has observed that the issues here are being avoided. So the message has been received. Politically orchestrated "unthinkability" of course, is no substitute for the application of the Rule of Law. It presents at the very least the spectacle of decisions being made on the basis of political bias. History will not be escaped. It will reveal whether this audacious and knowing attempt to get around the Constitution and one of its most specific requirements will succeed through a tactic of seeking to intimidate and control the courts to prevent them from applying a constitutional rule of law or whether its judges will

take their oath to preserve and protect the Constitution as seriously as those who have sworn the oath to preserve and protect in the military such as Colonel Hollister do. In a very real sense it is our system of a constitutional rule of law that is on trial here, and that is under attack. Those who will not defend and protect as they have sworn to do should recuse themselves. Their decision, in adopting the opinion below, should they chose to do so, without analyzing the actual issues, is a political one echoing the bias we have set out.

As such it presents at least the appearance that violates 28 U.S.C. § 455 and they are, therefore, bound to recuse themselves. Respectfully submitted,

/s/

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have caused the foregoing **MOTION FOR RECUSAL PURSUANT TO 28 U.S.C. § 455** to be served upon counsel of record this 31st day of May, 2010.

/s/ John D. Hemenway

(3)

Supreme Court, U.S
FILED
FEB 7 - 2011
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Docket No. 10-678

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In The
SUPREME COURT OF THE UNITED STATES

GREGORY S. HOLLISTER, et al.,

Petitioner

v.

BARRY SOETORO, et al.,

Respondents.

On Petition for Writ of Certiorari
To the United States Court of Appeals
For the District of Columbia Circuit

PETITION FOR REHEARING

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PETITION FOR REHEARING

In accordance with Rule 44 of this Court, the petitioners respectfully suggest that it is an intervening circumstance of substantial import that after the petitioners filed their cert petition but before it was denied without comment, the petitioners filed a motion with the Court for the recusal of Justices Sotomayor and Kagan from any decision on the cert petition. The time for a response to that motion under the rules of this Court passed prior to the petition being considered at Conference and denied without comment; during that time the respondents did not oppose the motion. Petitioners would request the Court to rehear their petition and in doing so to consider the consequences of their motion for recusal of December 30, 2010 being treated as conceded because it was not opposed in a timely fashion under the Rules of this Court.

Rule 21 (4) of the Court requires that any motion shall have an opposition to it filed, if one is to be filed, "as promptly as possible considering the nature of the relief sought...and, in any event, within ten days of receipt...." Thus by January 14, 2011, when petitioners' petition was denied without comment, the respondents had failed to respond to the motion. Therefore, as a matter of due process of the Court, petitioners suggest that the Court should have on that day considered the possibility that the motion had been conceded by respondents with an examination of the consequences of that failure. Petitioners' motion for recusal was, as certified, mailed to opposing counsel and filed with the Court on December 30, 2010.

If petitioners are entitled to have their motion for recusal as conceded because of lack of a timely opposition, as petitioners contend is the case, then the Court was obliged to make sure that the Justices Sotomayor and

Kagan did not participate in the decision. Yet there was no statement that they did not participate.

A further significant part of that concession is the concession that the precedent set by Mr. Justice Story in *Shanks v. Dupont*, 28 U.S. (3 Pet.) 242 (1830) should be treated as conceded as having to be adhered to in this case. That means that the Court should have considered that the common law of England, referred to by Justice Story in that opinion as mere "municipal law" should have been disregarded by the Court in favor of considering that the Framers of the Constitution looked to the law of nations on matters of citizenship such as the phrase in question here as placed in Article II, Section 1, Clause 5, namely, the requirement that a President "be" a "natural born citizen." This in turn calls into consideration the opinion of Chief Justice John Marshall in *The Venus*, 12 U.S. (8 Cranch) 253 (1814), as concurred in by Justice Livingston, with its full quote from Vattel on the meaning of the phrase and the other authorities such as St. George Tucker and the founder Daniel Ramsay referred to by the petitioners in this case. Thus, it would seem, with all due respect, that if the Court is required to and does treat the petitioners' Motion for Recusal as conceded the Court would be required to consider the intent of the Framers of the Constitution in choosing the Article II phrase "natural born citizen" as they did. See App. 114 ff. That is, of course, assuming that the majority of its members still believe that the intent of the Framers is essential to the constitutional rule of law in this country.

Other intervening circumstances of substantial impact include the public events surrounding the election of the former Hawaii Congressman Abercrombie (D) to the governorship of Hawaii. As he assumed office, he loudly proclaimed publicly in the press that he was going to end the "birther" controversy over the question of the respondent Obama having been born in Hawaii, only to have his efforts in that regard completely fizzle with reports that he had to acknowledge that there was no proof of the fact of the respondent's having been born there as backed by other reports in the press and a sworn affidavit by a former official of the Hawaii Department of Vital Statistics, that it was common knowledge in that department when he worked there that there was no such proof. This accentuates the question presented by petitioners that the allegations of the complaint in this case were not taken as true for purposes of a Rule 12(b)(6) dismissal as required by the controlling precedent of this court and the error in not accepting the formal motion of the petitioners for judicial notice of the territorial statutes governing in Hawaii at the time, whose laxity and loopholes allowed such things as the issuance to Sun Yat Sen, the Chinese nationalist leader, of the same type of document that the respondents have claimed on the internet and from the White House "proves" that the respondent Obama was born in Hawaii. In the Court of Appeals petitioners requested the court to take judicial notice of the territorial statutes in effect in Hawaii at the time and take note of their laxity and loopholes. That motion was denied as irrelevant but these intervening events show that that was error.

The relevant portions of those territorial statutes can be found at Appx. p. 37 ff.

Perhaps the most extraordinary intervening events that have occurred concern the overwhelming assault upon the constitutional rule of law in this country by the respondent Obama and those working for him. In the case of their illegal ban on offshore drilling, they have been actually found in civil contempt by Judge Martin Feldman after they exceeded their authority and that judge struck down the ban as a result. They immediately came back and instituted a further illegal ban, showing no respect for the rule of law at all. USDC-EDLA, Case No. 2:10-01663, *Hornbeck Offshore Services, L.L.C. v. Kenneth Lee ("Ken") Salazar, et al.* See the ABC news account as taken from Associated Press http://abcnews.go.com/Business/wireStory?id=12827405.

In the case of the recent decision by federal Judge Vinson in Florida declaring the respondent Obama's health care law unconstitutional and denying an injunction because the judge held the declaratory judgment served the same purpose, the respondent Obama and those working for him have made it clear that they intend to ignore the decision and proceed as if they never opposed it vigorously in court and the decision never happened. USDC-NDFL, Case No. 3:10-cv-91 (RV/EMT), *State of Florida, by and through Attorney General Pam Bondi, et al., v. U.S. Department of Health and Human Services, et al.*. See Scribd at http://www.scribd.com/doc/47909640/vinsonruling1-31-11

Thus, we have not exaggerated in presenting the question of the constitutional rule of law being at stake in this matter. A man has successfully run for the office of President and has done so, it appears, with an awareness that he is not eligible under the constitutional requirement for a person to be President. Despite a vigorous campaign that he has conducted to make "unthinkable" the very idea of raising the issue of his eligibility under the Constitution to "be" President the issue has not gone away. Instead it has steadily grown in the awareness of the public. Should we be surprised that he shows no respect for the constitutional rule of law? What else would we expect? The real question here is one of getting members of the judiciary to take seriously the oath that they swore to protect and preserve the Constitution. To continue to avoid the issue will destroy the constitutional rule of law basis of our legal system when it is under vigorous assault as surely as if the conscious decision were made to cease preserving and protecting our founding charter. The truth will come out.

Respectfully submitted,

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CERTIFICATION OF GOOD FAITH

I HEREBY CERTIFY that I am filing this PETITION FOR REHEARING in good faith, and with no intention of delaying proceedings.

John D. Hemenway

Dated: February 8, 2011